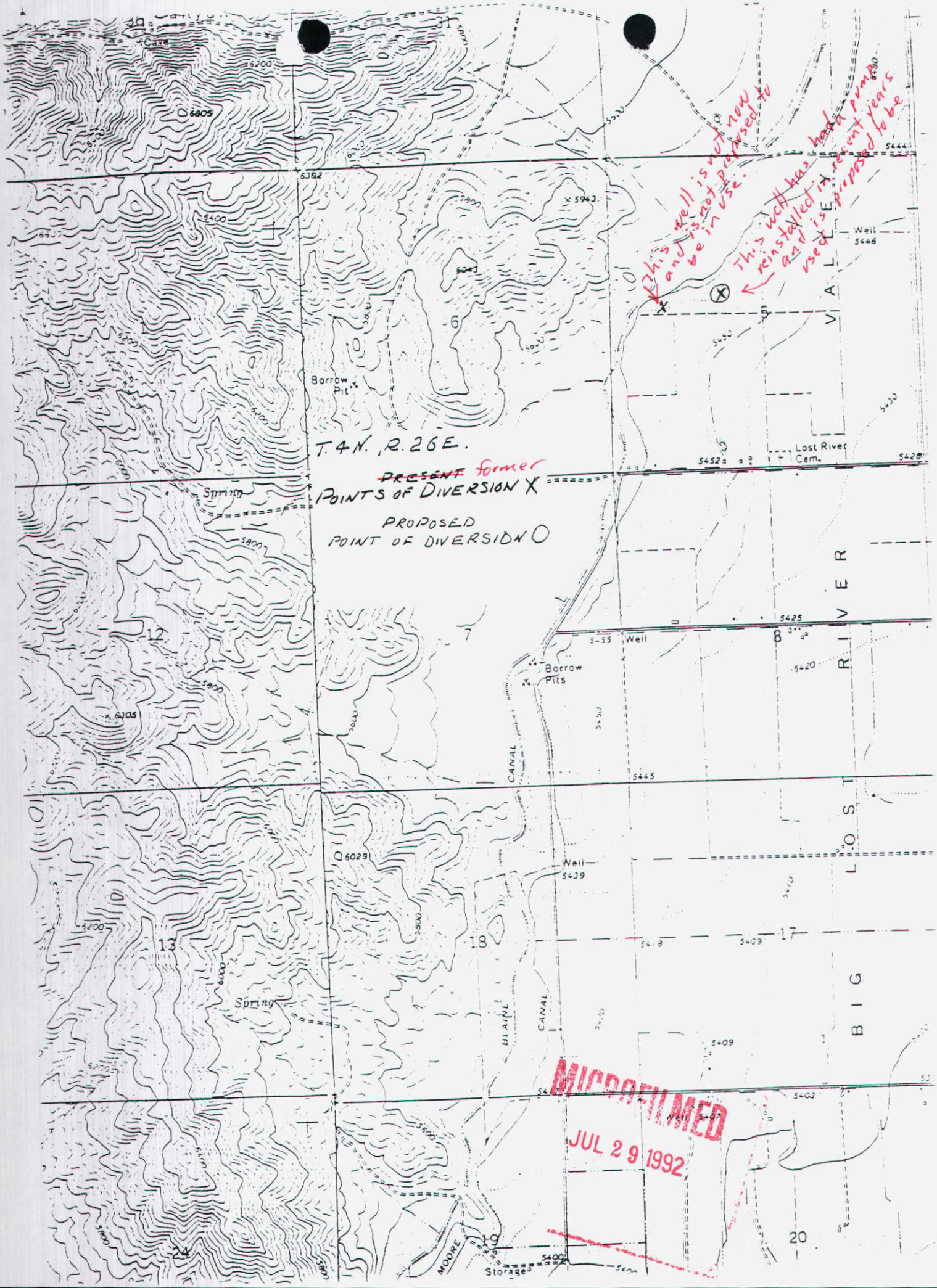
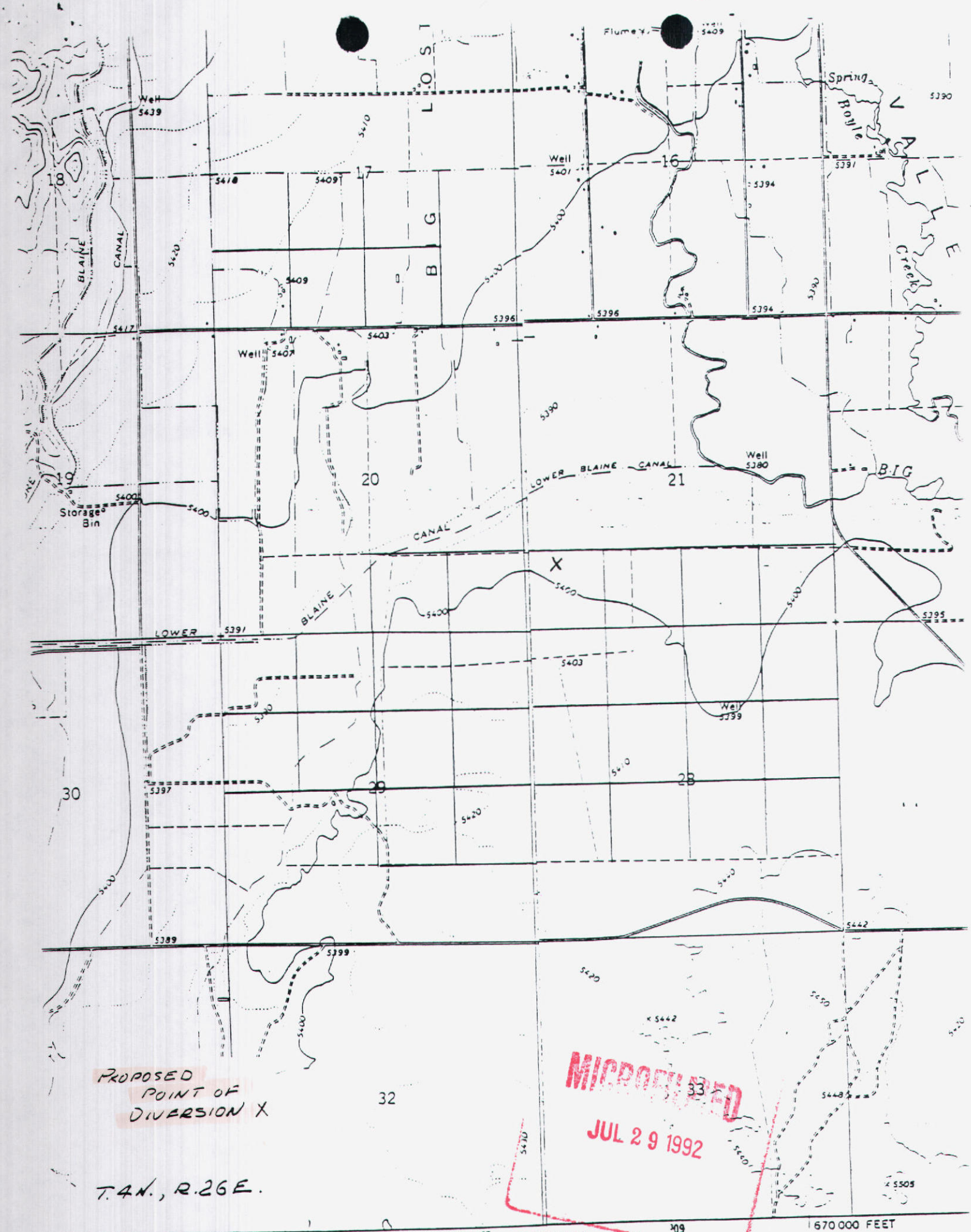
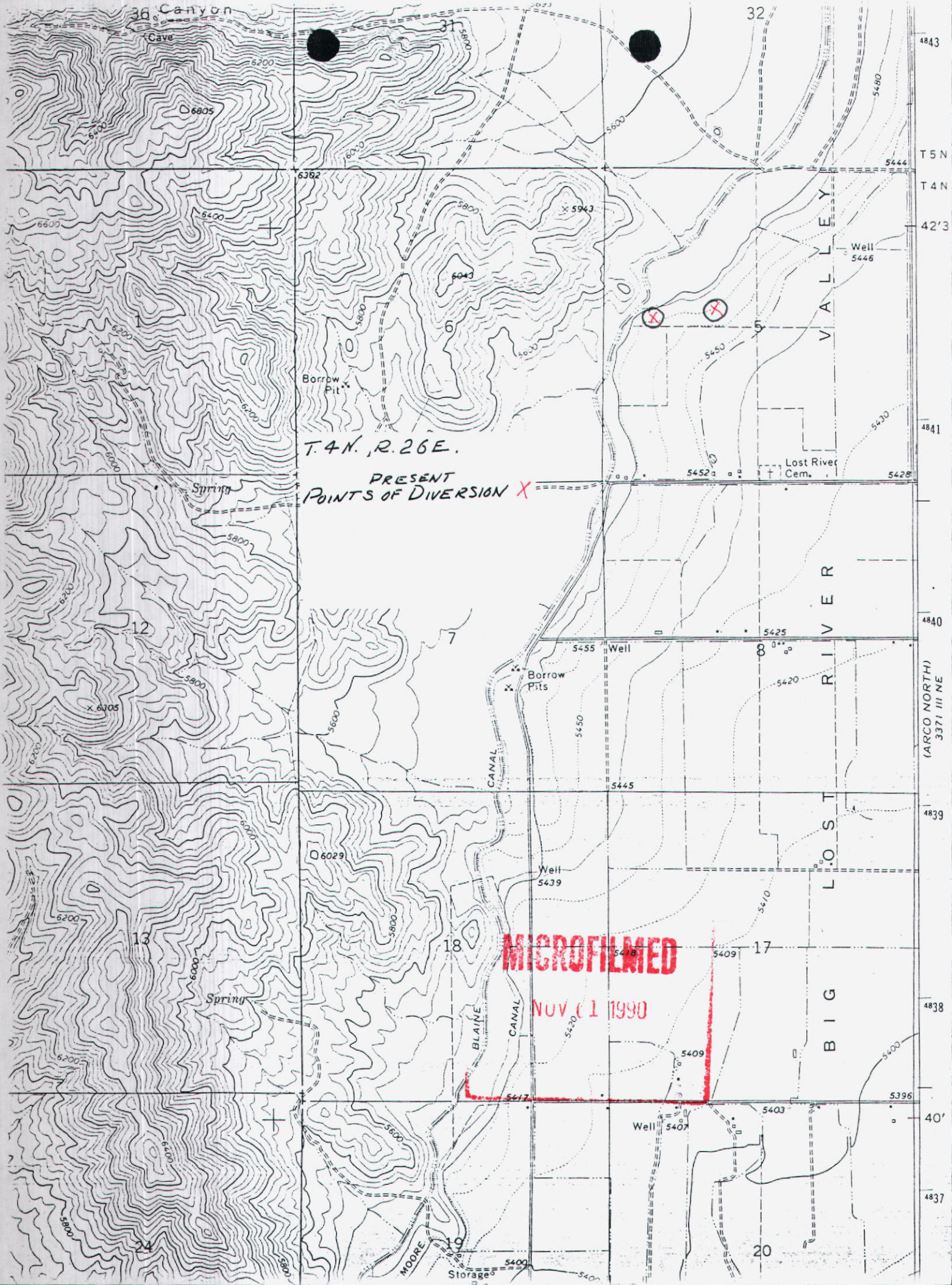
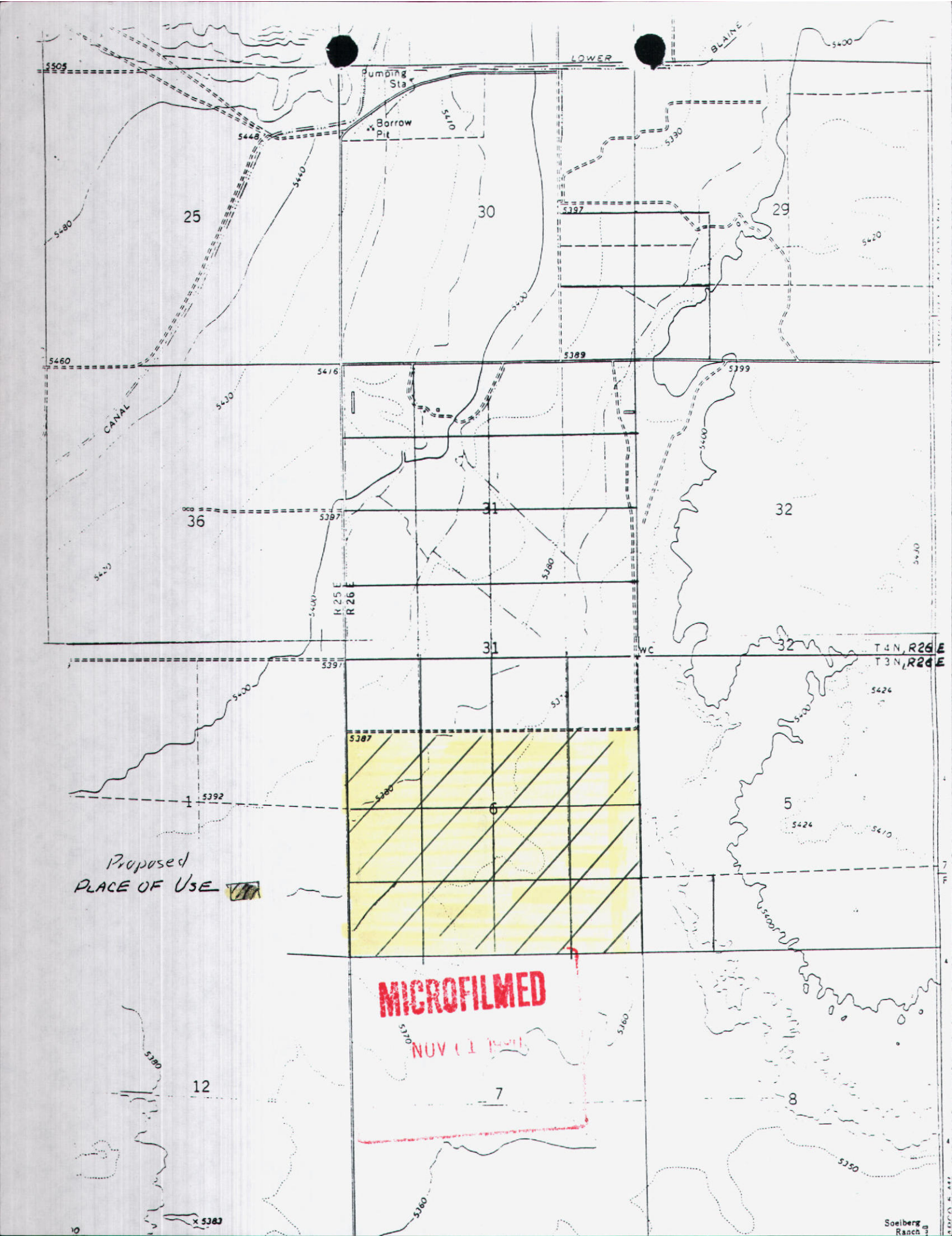

T.4N., R.26E.
~~PRESENT~~ former
POINTS OF DIVERSION X
PROPOSED
POINT OF DIVERSION O
this well is not now and is not proposed to be in use.
this well has been reinstalled in recent years and is proposed to be used as a pump
Borrow Pit
Spring
Cave
Well 5446
Lost River Cem.
Borrow Pits
Well 5439
Well 5407
Storage
BLAINE CANAL
MOORE CANAL
LOST RIVER
BIG LOST VALLEY
MICROFILMED
JUL 29 1992


Well 5439
Flume
Spring
Boyle
VALLEY
Creek
Well 5401
16
17
18
19
20
21
LOST
BIG
BLAINE CANAL
Well 5407
Well 5380
LOWER BLAINE CANAL
Storage Bin
CANAL
BLAINE
LOWER
Well 5399
29
28
30
32
33
PROPOSED POINT OF DIVERSION X
T.4N., R.26E.
MICROFILMED
JUL 29 1992
26. 6 ALT. 93
INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1977
113°22'30"
1 670 000 FEET
ROAD CLASSIFICATION
Mapped, edited, and published by the Geological Survey

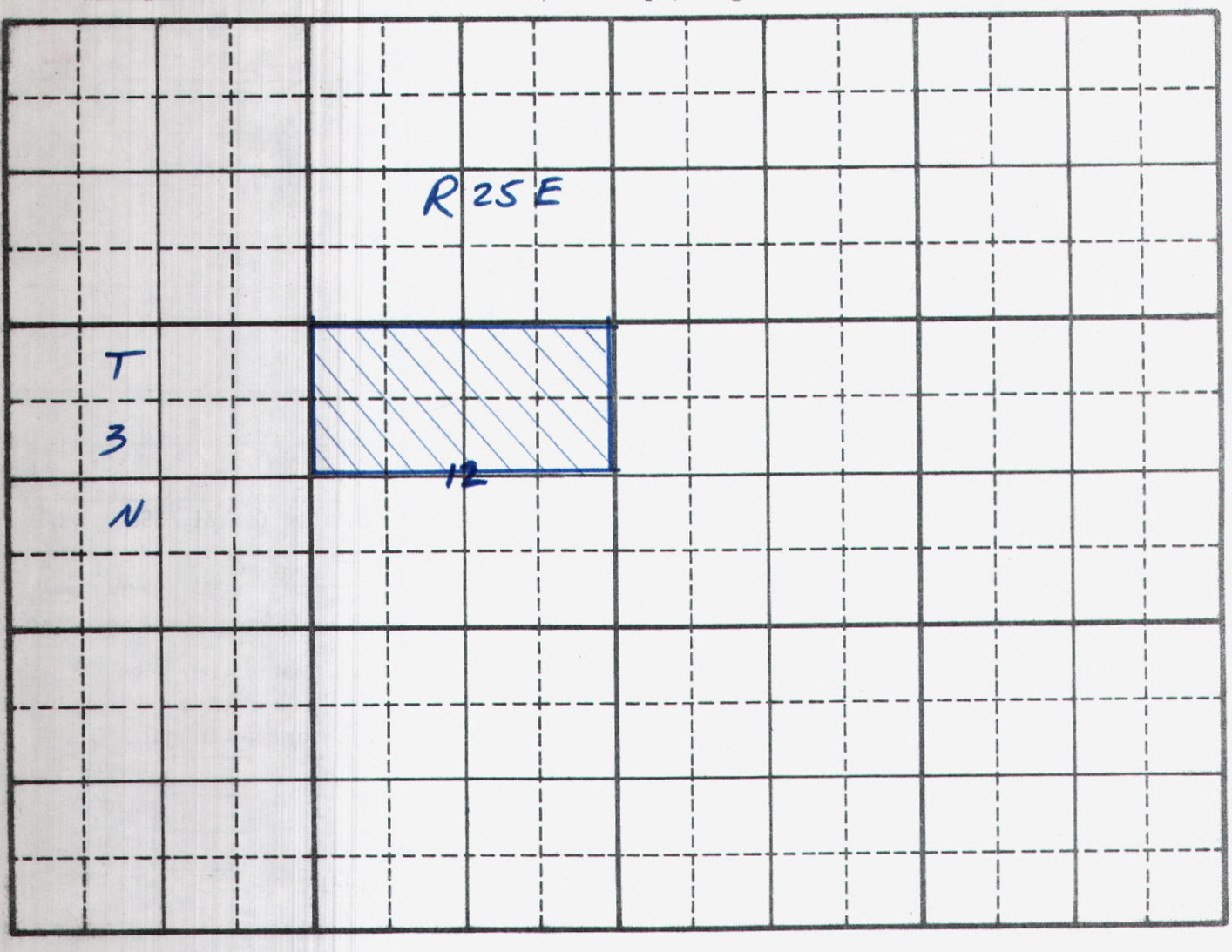

LOWER
Pumping Sta.
Borrow Pit
CANAL
25
30
29
36
31
32
6
5
7
8
12
18
17
13
R25E
R26E
T4N, R26E
T3N, R26E
Proposed
PLACE OF USE
Corral
Soelberg Ranch
BM 5358
BM 5351
MICROFILMED
JUL 29 1992


Well 5439
Flume
Well 5409
Spring
Boyle
VALLEY
Creek
Well 5401
Well 5407
Well 5380
Well 5399
Storage Bin
BLAINE CANAL
LOWER BLAINE CANAL
LOST
BIG
LOWER
18
17
16
15
19
20
21
22
30
29
28
27
32
33
34
5418
5409
5396
5394
5391
5417
5403
5400
5390
5397
5389
5399
5410
5420
5440
5442
5448
5450
5430
5395
PROPOSED POINT OF DIVERSION
T. 4 N., R. 26 E.
MICROFILMED
NOV (1 990
26. & ALT. 93
INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1977
307
308000m.E.
113°22'30"
309
670 000 FEET
ROAD CLASSIFICATION
Mapped, edited, and published by the Geological Survey


T. 4 N., R. 26 E.
PRESENT POINTS OF DIVERSION
Canyon
Cave
Spring
Spring
Borrow Pit
Borrow Pits
Well 5446
Well 5455
Well 5439
Well 5407
Lost River Cem.
Storage
BLAINE CANAL
MOORE CANAL
BIG LOST RIVER VALLEY
(ARCO NORTH) 3371 III NE
MICROFILMED
Nov 01 1990
T 5 N
T 4 N
42'30"
40'


LOWER
BLAINE
Pumping Sta
Borrow Pit
CANAL
25
30
29
36
31
32
1
6
5
12
7
8
R25E
R26E
T4N, R26E
T3N, R26E
Proposed
PLACE OF USE
MICROFILMED
Soelberg Ranch

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

That no one will be injured by such change, and that such change will be made at permit holders own risk.

Signed at Idaho Falls, this 9 day of Jan, 19 76.

John E. McAffee
(signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, _____, Director of the Department of Water Resources

hereby _____

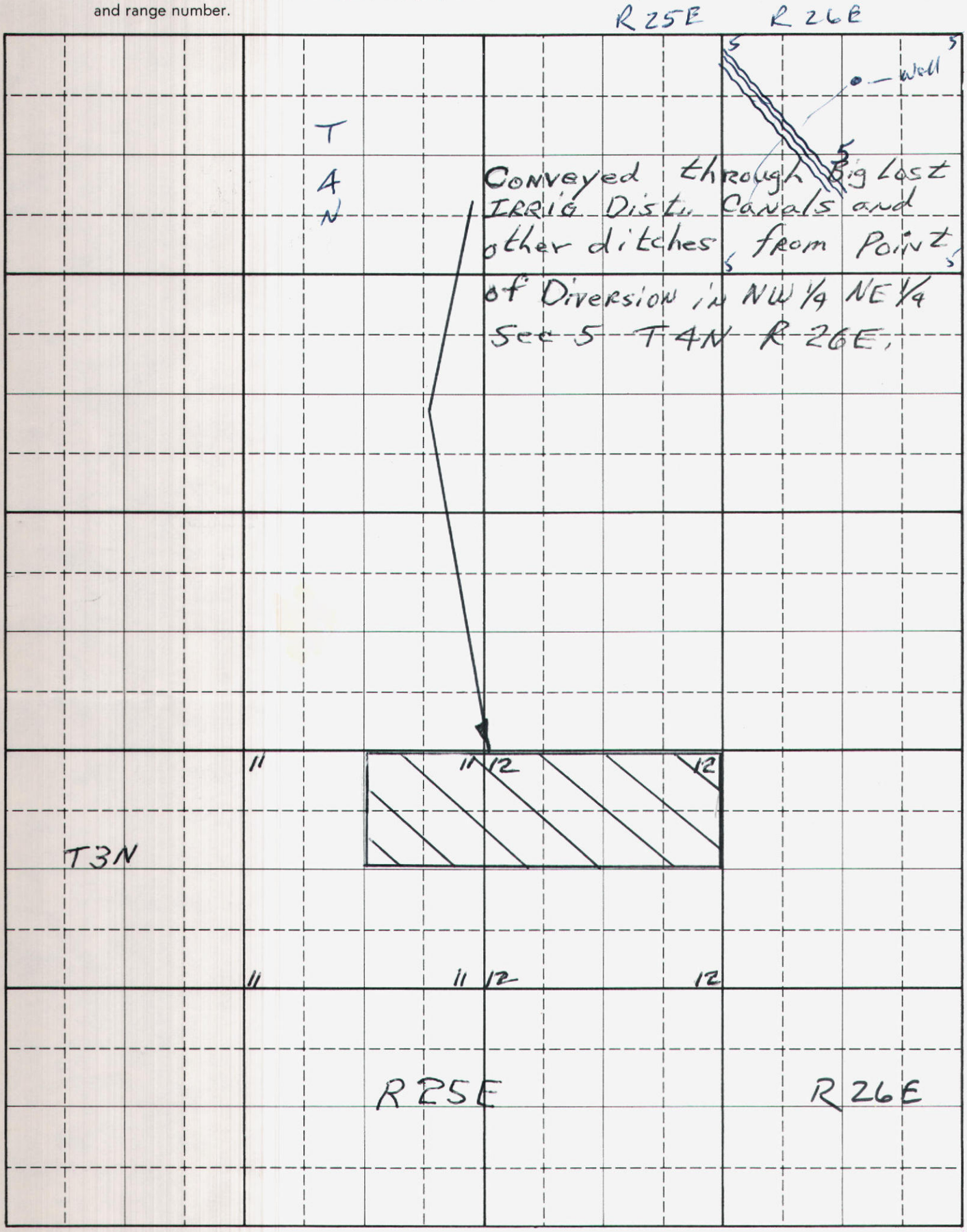
REPLACED BY AMENDMENT FILED APRIL 8, 1976.

Witness my hand this _____ day of _____, 19 _____.

REPLACED BY AMENDMENT FILED APRIL 8, 1976.

Director

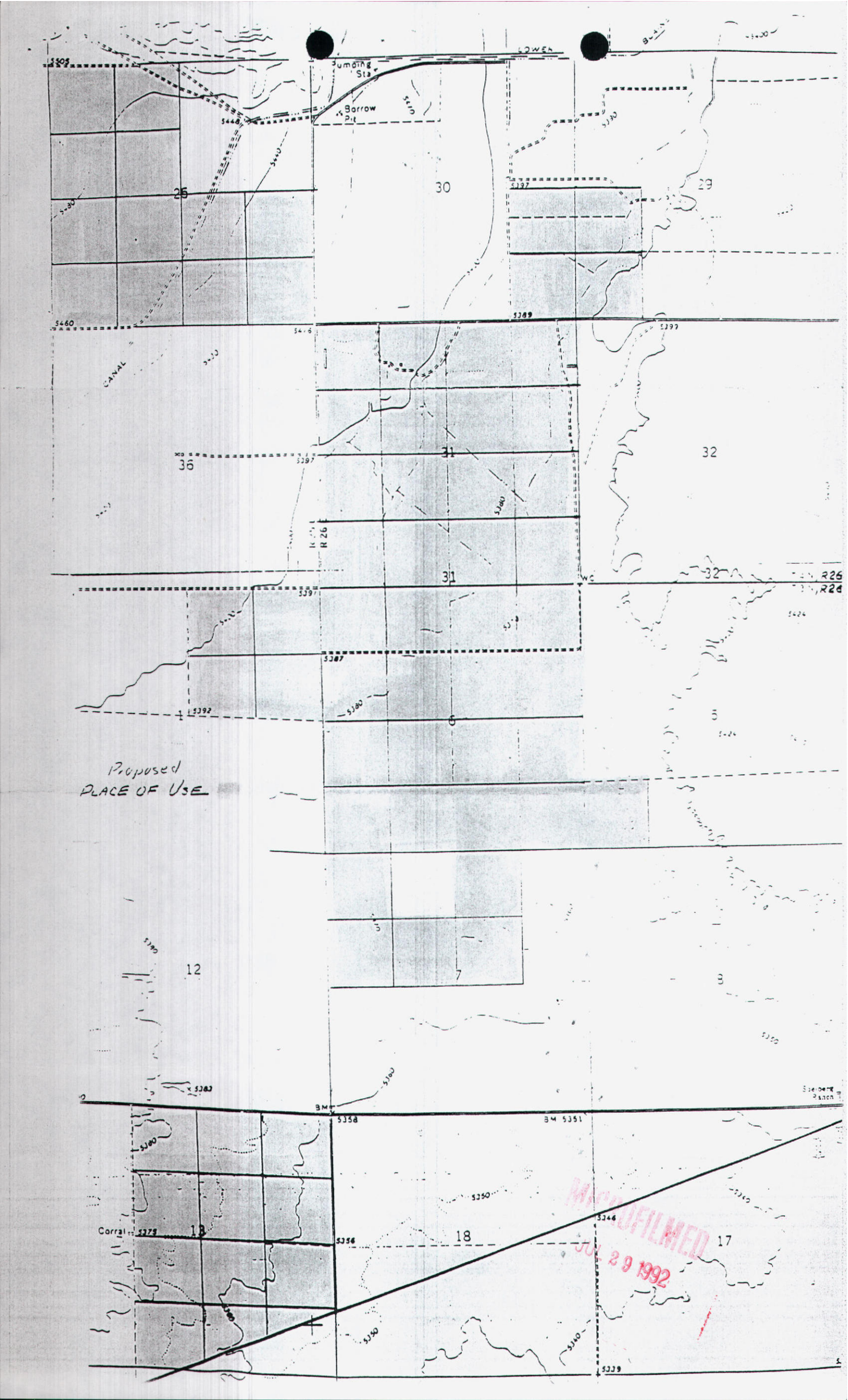
11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Thomas Perkes
(Applicant)



MICROFILMED
JUL 29 1992

2. Describe the reason for the proposed changes Present place of use for Perkes [illegible] aside program; pending application for permit of Aikele for portion of place of use is involved in litigation. This will provide a method for legal diversion of one Aikele well and additional water for other places of use which are short of water because of drouth

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
34-7080A	09/23/1974	2.67 cfs	Irrigation	April 1 to Nov. 1
34-7136	03/26/1976	5.50 cfs	Irrigation	April 1 to Nov. 1
34-7169	01/06/1977	4.48 cfs	Irrigation	April 1 to Nov. 1
				to

2. Total amount of water being transferred 12.65 (But see conditions in licenses) cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SW	21	4N	26E	Butte	Aikele Well
		SE	NW	5	4N	26E	Butte	Perkes Well

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	1	33 6.9	33 6.9	33 6.9	33 6.9													27.6
		13	4.2	6.3	7.4	8.4	6.3			6.3	7.8			3.8	8.2	8.4	4.8	1.1	73.0
4N	25E	25					33 6.9	33 6.9	33 6.9	40 8.4	40 8.4	33 6.9	33 6.9	33 6.9	33 6.9	40 8.4	33 6.9	33 6.9	87.3
3N	26E	5											3.5						3.5
		6	40 8.4	40 8.4	8.4	8.4	40 8.4	39 8.4	8.4	8.4	8.4	8.4	7.3	6.1	8.4	8.4	8.1	5.5	127.8
		7		1.4	4.3			1.0	2.7	.6									10.0
4N	26E	29										40/35 7.2	8 2.2						9.4
		30													40 8.2		2	8.2	8.2 16.4
		31	40 7.1	37/3 7.3	38/3 8.2	40 8.2	28 5.7	31 6.9	39 8.2	38 7.8	40 8.2	39 8.2	39 8.2	40 8.2	5/33 8.4	27/13 8.2	40 8.2	40 8.2	125.0

Total acres 480.0

water Rights associated w/ ¼-¼ aka # of acres / 40 acre tract

only APPLICATIONS ASSOCIATED w/ ¼-¼

MICROFILMED JUL 29 1992

Appear to spread W.R. for 480 acre over at least 224 4acres

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	TOTALS	
3N	25E	1	6.9	6.9	6.9	6.9														
	34-7122		33	33	33	33														GW
	7430		40	40	40	40														Big Lost/Antelopeck
		13	4.2	6.3	7.4	8.4	6.3			6.3	7.8			3.8	8.2	8.4	4.8	1.1		
	7480				20					20	37			15	40	40	29	5		GW
3N	26E	5											3.5							GW
	7296												40							Groundwater
	7456												2							
	7457												2							
	7487												2							Big Lost
		6	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	7.3	6.1	8.4	8.4	8.1	5.5		Groundwater
	2315		40	40			40													
	7244		40	40	40	40	40	40	40	40										
	7246				40	40			40	40	40	40			40	40				
	7296				40	40			40	40	40	40	40	40	40	40	40	40		
	2472							39												
	7455								40	40		40								
	7482												5	10						
	7456																2	14		waste-water
	7457																2	14		
	7487																2	14		Big Lost

RECEIVED
JUL 29 1992

Total number of acres irrigated _____

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	TOTALS	
3N	26E	7		1.4	4.3			1	2.7	.6										
	7456			26	17															WASTEWATER
	7457			26	17															GW
	7482			11	5			37	32	35										GW
	7487			26	17															Big Lott
4N	25E	25					6.9	6.9	6.9	8.4	8.4	6.9	6.9	6.9	6.9	8.4	6.9	6.9		
	7035						33	33	33	40	40	33	33	33	33	40	33	33		GW
	7526						0								2					Bar P Bar Inc GW
	7430							40	40	40	40	40	40	40	40	40	40	40		Big Lott/Antelope Ck
	4085										1	8								MAESTAS GW
	4086												5							MAESTAS GW
4N	26	29										7.2	2.2							
	2272											38								waste water
	2308											40								Waste wate
	2309											40								GW
	2358A											35	8							GW
	30														8.2					
	2272														40					Waste wate
	2308														40					Waste wate
	2358A														40					GW

MICROFILMED
JUL 29 1992

Total number of acres irrigated _____

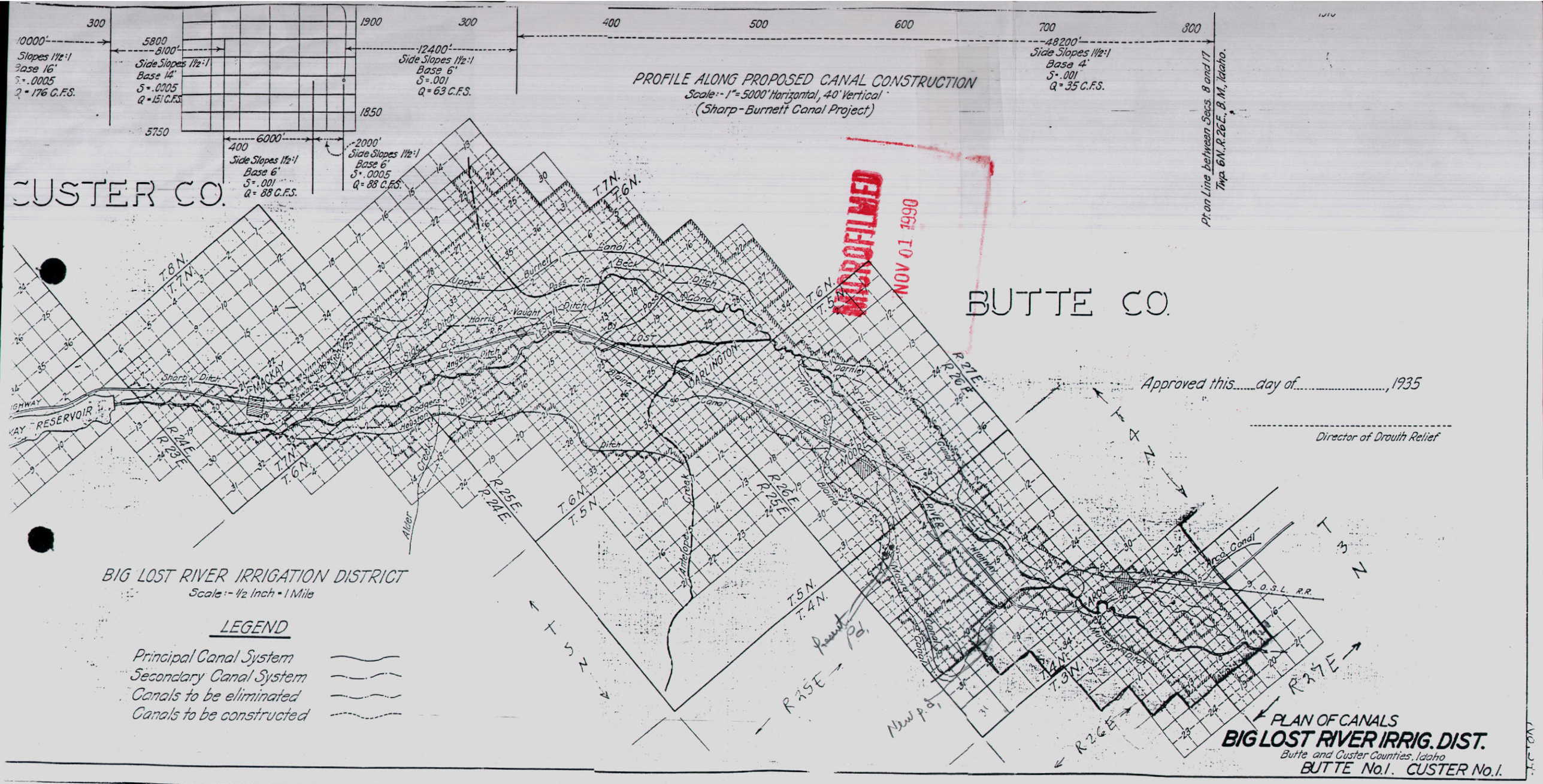
LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	TOTALS
4N	26E	31	7.1	7.3	8.2	8.2	5.7	6.9	8.2	7.8	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	
	2429B		40	3	3	40									33	2			GW
	2358A			37	38											13			GW
	7244			37	37		40	40	40	40	40	40							GW
	2472						28	31	39	38	40	39	39						GW
	7516											5							LOS Chara GW
	2315													40	5	27	40	40	GW

MICROFILMED
JUL 29 1992

Total number of acres irrigated _____


300
10000'
Slopes 1½:1
Base 16'
S=.0005
Q=176 C.F.S.
5800
8100'
Side Slopes 1½:1
Base 14'
S=.0005
Q=151 C.F.S.
1900
1850
5750
300
12400'
Side Slopes 1½:1
Base 6'
S=.001
Q=63 C.F.S.
400
500
600
700
800
48200'
Side Slopes 1½:1
Base 4'
S=.001
Q=35 C.F.S.
6000'
400
Side Slopes 1½:1
Base 6'
S=.001
Q=88 C.F.S.
2000'
Side Slopes 1½:1
Base 6'
S=.0005
Q=88 C.F.S.
PROFILE ALONG PROPOSED CANAL CONSTRUCTION
Scale:- 1"=5000' Horizontal, 40' Vertical
(Sharp-Burnett Canal Project)
Pt on Line between Secs 8 and 17
Twp 6N. R.26E. B.M., Idaho.
CUSTER CO.
BUTTE CO.
MICROFILMED
NOV 01 1990
Approved this ..... day of ....., 1935
Director of Drouth Relief
T.8N.
T.7N.
T.6N.
T.5N.
T.4N.
T.3N.
R.24E.
R.25E.
R.26E.
R.27E.
MACKAY
RESERVOIR
Sharp Ditch
Upper Burnell
Burnell Ditch
Dess Cr.
Canal
Beck Ditch
Vaught Ditch
Harris Ditch
Lost
Blaine
Canal
CARLINGTON
Darnley
Island
Moore
Ditch
Alder Creek
Antelope Creek
Blaine
Creek
RIVER
Highway
Moore
Canal
Arco Canal
O.S.L. R.R.
ARCO
Nursery Road
Present p.o.
New p.o.
BIG LOST RIVER IRRIGATION DISTRICT
Scale:- ½ Inch = 1 Mile
LEGEND
Principal Canal System
Secondary Canal System
Canals to be eliminated
Canals to be constructed
PLAN OF CANALS
BIG LOST RIVER IRRIG. DIST.
Butte and Custer Counties, Idaho
BUTTE No.1. CUSTER No.1.

R. 25 E.

T. 3 N.

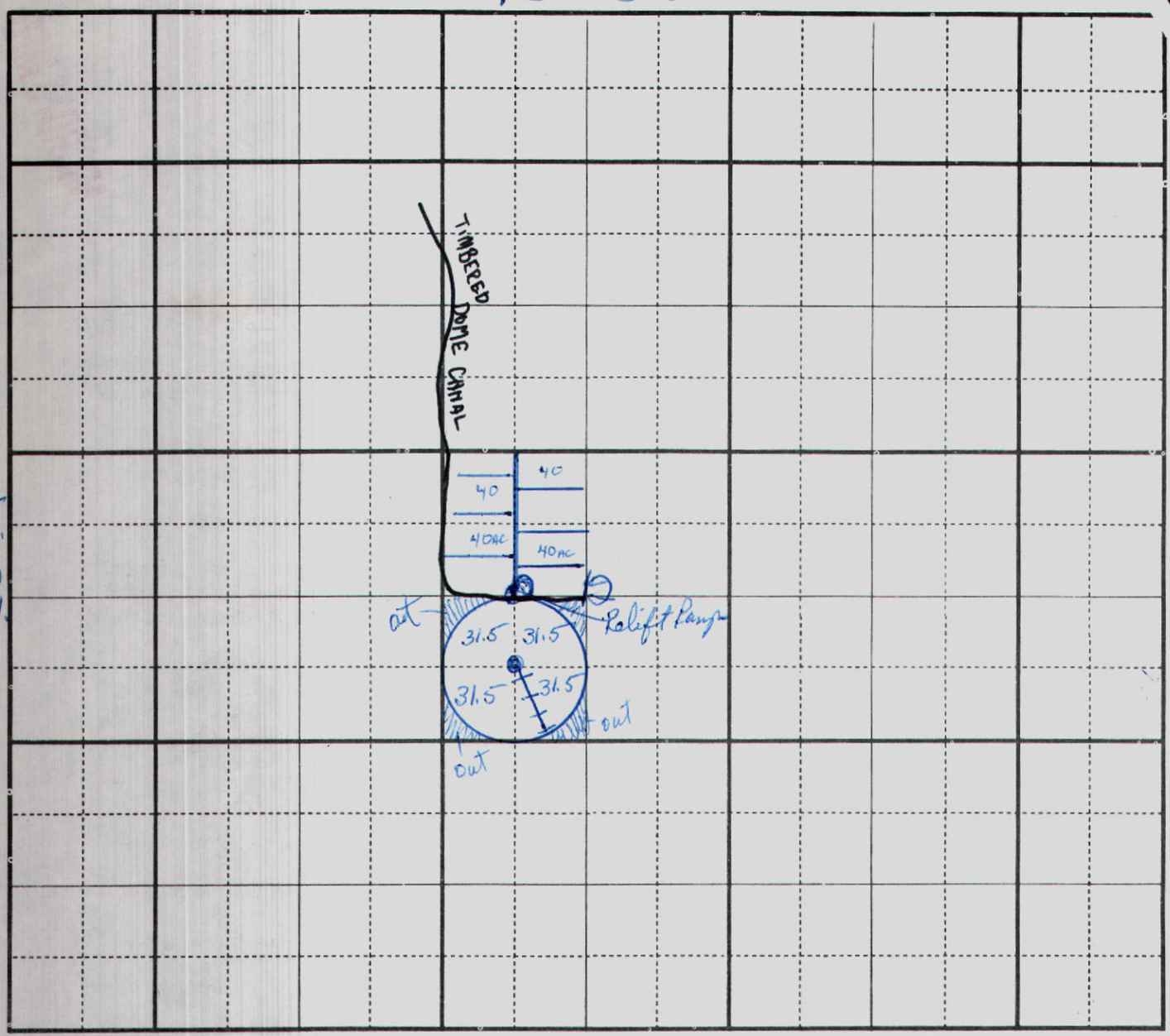
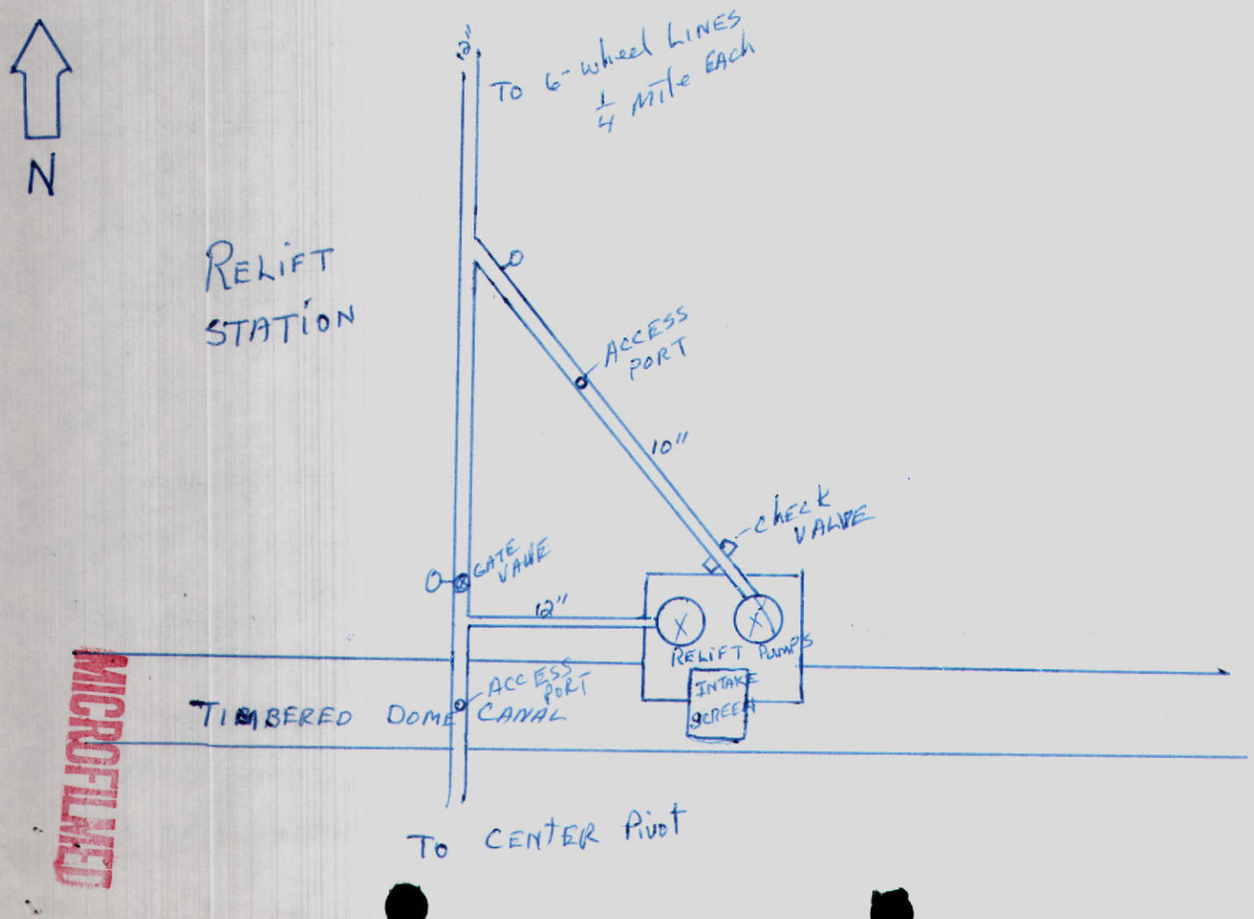


Diagram of System



MICROFILMED

Name and Address of Sender

Indicate type of mail:
☐ REGISTERED ☐ REGISTERED C.O.D.
☐ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	REST. DEL. FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
1	17	Gordon Fulton Magby Idaho	13	30	15				34-7124
2	18	Harry Tinkham, Selkirk Idaho	13	30	15				"
3	19	Libby Parker Mackay	13	30	15				"
4	20	Ernest Howard Challis Idaho	13	30	15				"
5	21	Frances L Smith, Mackay Idaho	13	30	15				"
6	22	Wiley J Smith, Mackay Idaho	13	30	15				"
7	23	(illegible) Coburn, Moore, Idaho	13	30	15				34-7119
8	24	Grant Daniels, Darlington, Idaho	13	30	15				34-7117 7080 34-7113+4
9	25	L Bruce Sudbury Box 141, Arco	13	30	15				34-7118
10	26	(illegible) Mc Affee Darlington, Idaho	13	30	15				34-7121+
11									34-7080
12									
13									
14									
15									
16		Sent by Certified Mail							
17		3-29-74 CW							
18									
19									
20									

TOTAL NO. OF PIECES LISTED BY SENDER: 10

TOTAL NO. OF PIECES REC'D AT P.O.

POSTMASTER, PER (Name of receiving employee)

*Show under "Remarks" class postage paid if other than first or if international

PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

★ U. S. GOVERNMENT PRINTING OFFICE: 1974-0-529-726

MICROFILMED

October 4, 1982

RE: Permit Nos. 34-7080A, 34-7136 and 34-7169

Marshal Todd Perkes
Route #1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

Enclosed herewith are copies of your water right licenses issued on the above-referenced permits along with copies of your approved applications for amendment. Also enclosed is Departmental Receipt No. 24614 in the amount of $60.00.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ/kw
Enclosures

MICROFILMED

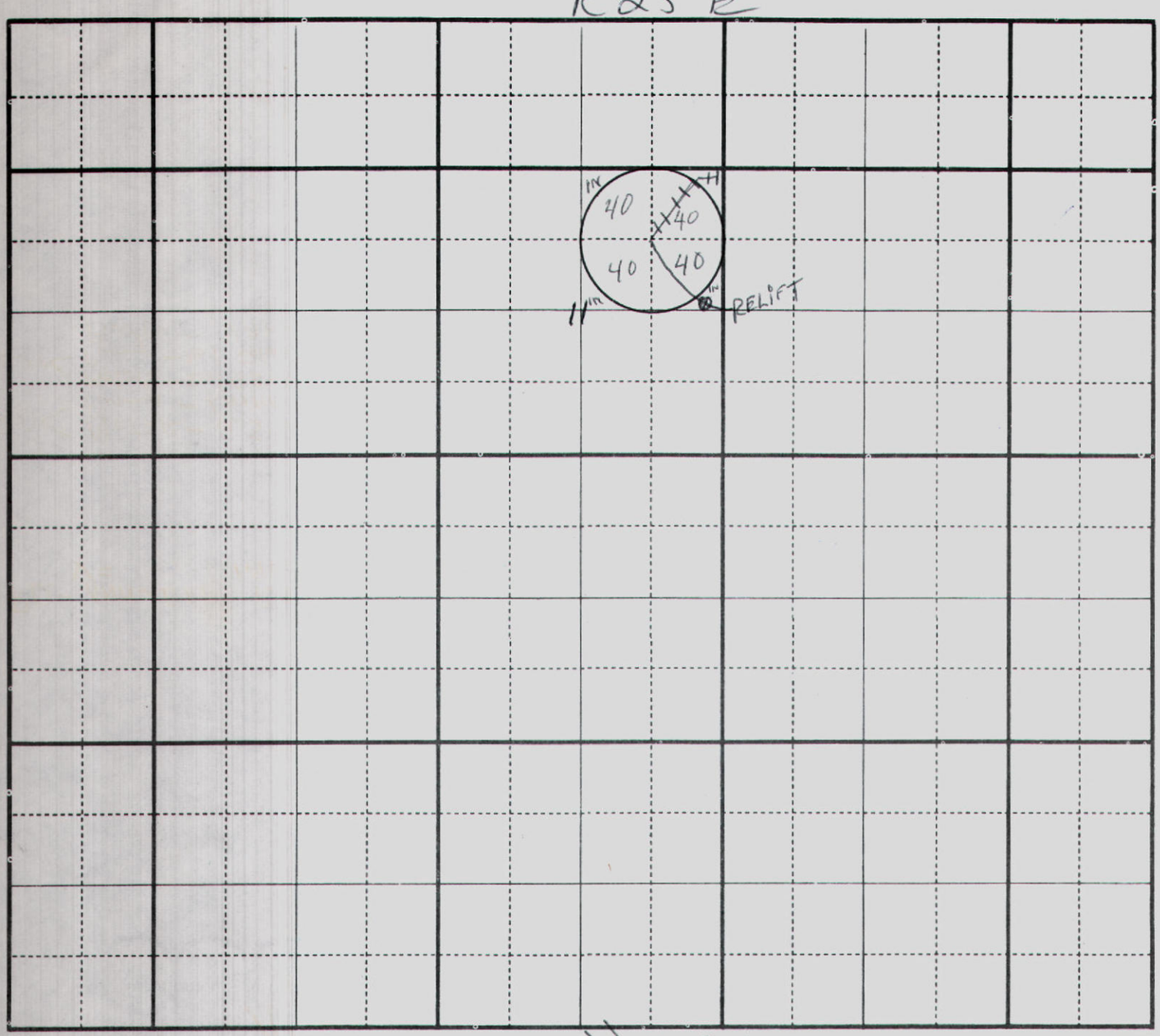


Diagram of System

MICROFILMED

April 26, 1976

RE: Application for Permit No. 34-7136 PERKES
" " " No. 34-7137 BURNS
Application for Amendment No. 34-7080 PERKES

Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced applications. The legal notice was to have been published in your paper on April 8 and April 15, 1976.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

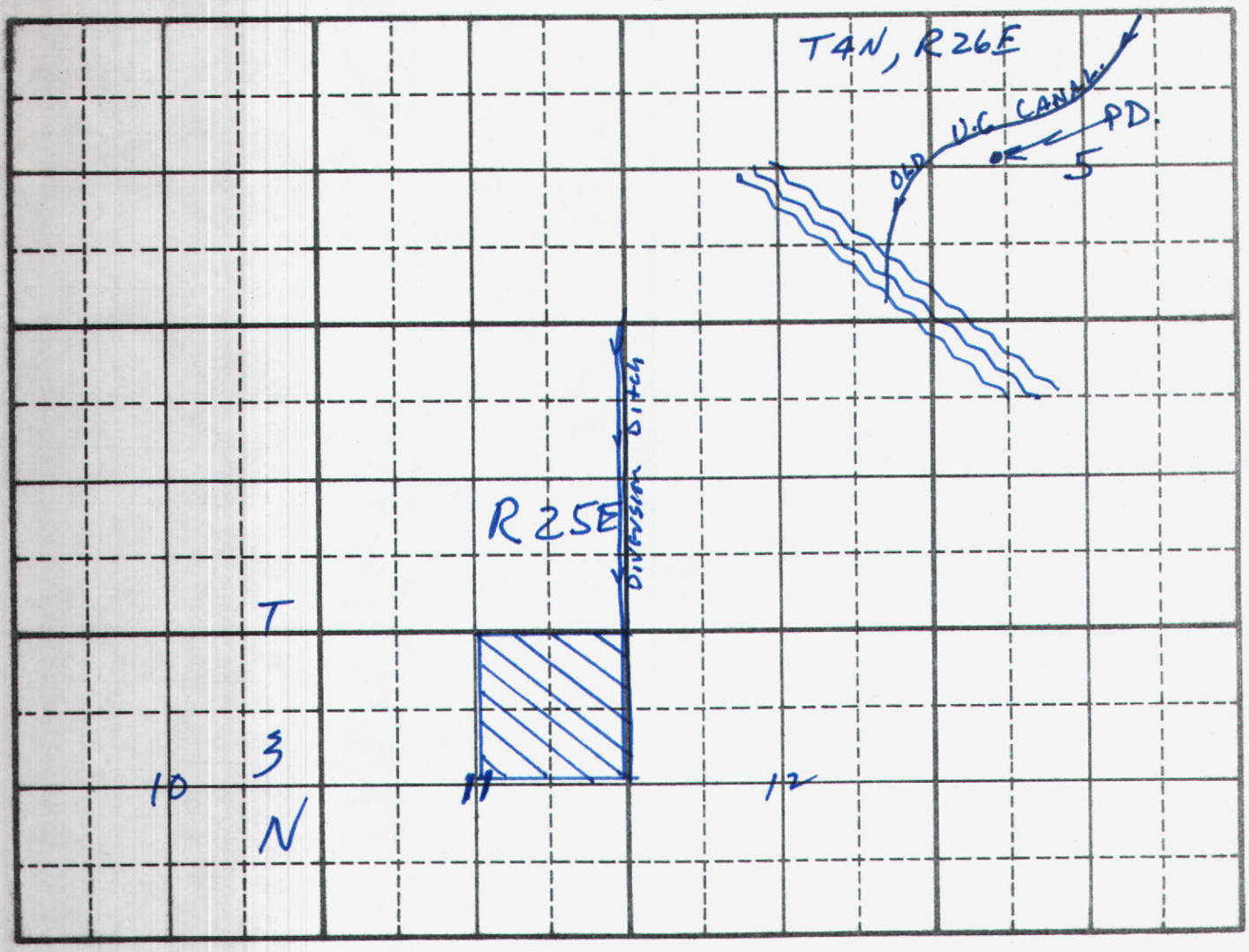
RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

MICROFILMED

Called 5-03-76
CW

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

That no one will be injured by such change, and that such change will be made at permit holders own risk.

Signed at Idaho Falls, this 26 day of March, 19 76.

Marshall Rukes
(signature)

OK DCI

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Administrator, Operations Division ~~Director~~ of the Department of Water Resources hereby APPROVE the above application for amendment for Permit No. 34-7080.

Witness my hand this 14 day of May, 19 76

A. Kenneth Dunn
~~Director~~
Administrator, Operations Division

Affidavit of Publication

RECEIVED
MAY 11 1976
Department of Water Resources
Eastern District Office

I, LeEdda Cammack, of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with the issue dated 4/8/76

and ending with the issue dated 4/15/76

LeEdda Cammack

Subscribed and sworn to before me this 8 day of May, 19 76

Notary Public

Residence: Arco, Idaho

My commission expires 5/14, 1978

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No. 34-7080 in the name of Thomas Perkes was issued for the diversion of 8.00 cfs of water from a ground-water source within the NW¼NE¼, Sec. 5, T. 4N, R. 26E, B.M., Butte County; to be used to irrigate 480 acres within the NE¼, Sec. 11, N½, Sec. 12, T. 3N, R. 25E, B.M.

WITH THE POINT of DIVERSION

The permit holder now proposed to amend Permit No. 34-7080 changing the point of diversion to the SW¼NW¼, Sec. 5, T. 4N, R. 26E, B.M.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 26, 1976.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho, on April 8 and April 15, 1976.

MICROFILMED

Form 27-2
1-87

Page 1 of 10

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 3812

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Department of Water Resources
Eastern District Office

Name of applicant M. Todd Perkes and Juel Aikele Phone (208) 523-0620

Post Office address c/o Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls, ID 83405

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
   ☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes Present place of use for Perkes' rights is in a set aside program; pending application for permit of Aikele for portion of place of use is involved in litigation. This will provide a method for legal diversion of one Aikele well and additional water for other places of use which are short of water because of drouth.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use		
34-7080A	09/23/1974	2.67 cfs	Irrigation	April 1	to	Nov. 1
34-7136	03/26/1976	5.50 cfs	Irrigation	April 1	to	Nov. 1
34-7169	01/06/1977	4.48 cfs	Irrigation	April 1	to	Nov. 1
					to	

2. Total amount of water being transferred 12.65 (But see conditions in licenses) cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp.	Rge	County	Local name for diversion
		SW	SW	21	4N	26E	Butte	Aikele Well
		SE	NW	5	4N	26E	Butte	Perkes Well

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	1	6.9	6.9	6.9	6.9													27.6
		13	4.2	6.3	7.4	8.4	6.3			6.3	7.8			3.8	8.2	8.4	4.8	1.1	73.0
4N	25E	25					6.9	6.9	6.9	8.4	8.4	6.9	6.9	6.9	6.9	8.4	6.9	6.9	87.3
3N	26E	5											3.5						3.5
		6	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	7.3	6.1	8.4	8.4	8.1	5.5	127.8
		7		1.4	4.3			1.0	2.7	.6									10.0
4N	26E	29										7.2	2.2						9.4
		30													8.2			8.2	16.4
		31	7.1	7.3	8.2	8.2	5.7	6.9	8.2	7.8	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.2	125.0

JUL 28 1992

Total acres 480.0

PART 1

6 General information

a Description of diversion system Wells and pumps.

b Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes

c Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer

This land is presently in a federal set aside program and is not being irrigated so there will be no effect for the duration of the lease agreement between Perkes and Aikele.

d. Remarks.

The three licenses, 34-7080A, 34-7136, and 34-7169, appear to show the two wells or points of diversion for the three rights in T.3N., R.25E., when, in fact, the wells are and always have been in T.4N., R.26E.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No 34-07080A/07136/07169

And said application is hereby APPROVED, subject to the following limitations and conditions.

PURSUANT TO FINAL MEMORANDUM DECISION & ORDER DATED

MICROFILMED
JUL 29 1992

Witness my hand this 27th day of July, 19 92

L. Keith Higginson

DIRECTOR

Transfer No _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by

   a. Decree No _____ Decreed to _____

   In case of _____ vs _____

   dated _____ in _____ county of _____

   b. License No 34-7080A issued by the Idaho Department of Water Resources

   c. Claim No _____ on file with the Idaho Department of Water Resources

   d. Transfer No _____ which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership Label document as attachment A Check appropriate box below

   ☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4 Date or priority September 23, 1974

5. Water is used for the following purpose

   amount 2.67 cfs (cfs/ac-ft) for Irrigation purposes from April 1 to Nov. 1

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

6. Total amount of water under right 2.67 cfs cubic feet per second and/or _____ acre-feet per annum
   (But see condition in license)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8 Lands irrigated or place of use

Twp	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11	40	40	40	40													160

Total acres 160

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C)

1. amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)

2. Point(s) of Diversion

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3 Lands irrigated or place of use:

Twp.	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1 amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion

3 Lands irrigated or place of use

Twp.	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

JUL 29 1992

Total acres _____

Transfer No _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1 Right evidenced by

a. Decree No _____ Decreed to _____

in case of _____ vs _____

dated _____ in _____ county of _____

b License No. 34-7136 issued by the Idaho Department of Water Resources

c Claim No _____ on file with the Idaho Department of Water Resources

d Transfer No _____ which produced this right.

2 Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership Label document as attachment A Check appropriate box below

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4 Date or priority March 26, 1976

5. Water is used for the following purpose

amount 5.5 cfs (cfs/ac-ft) for Irrigation purposes from April 1 to Nov. 1

amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

6. Total amount of water under right 5.5 cfs cubic feet per second and/or _____ acre-feet per annum
(But see condition in license)

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp.	Rge	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use

Twp	Rge	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11					40	40	40	40									160

Total acres 160

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No _____

10 To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2 Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion

3 Lands irrigated or place of use

Twp.	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

JUL 29 1932

Total acres _____

Transfer No _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1 Right evidenced by

a. Decree No _____ Decreed to _____

in case of _____ vs _____

dated _____ in _____ county of _____

b. License No 34-7169 issued by the Idaho Department of Water Resources

c. Claim No _____ on file with the Idaho Department of Water Resources

d Transfer No _____ which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4 Date or priority January 6, 1977

5. Water is used for the following purpose

amount 4.48 cfs for Irrigation purposes from April 1 to Nov. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6 Total amount of water under right 4.48 cfs cubic feet per second and/or _____ acre-feet per annum
(But see condition in license)

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec	Twp	Rge.	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8 Lands irrigated or place of use

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11													40	40	40	40	160

Total acres 160

9 Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C)

1 amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion

Lot	¼	¼	¼	Sec	Twp	Rge.	County	Local name for diversion

3. Lands irrigated or place of use

Twp	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2 Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp.	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

JUL 29 1992

Total acres _____

Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

SEE ATTACHED MAPS FOR CURRENT POINTS OF DIVERSION AND PLACE OF USE AND FOR PROPOSED NEW POINT OF DIVERSION AND PLACE OF USE.

SCALE 2 inches equal 1 mile Draw plan in ink

Transfer No _____

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				_____ to _____
				_____ to _____

2. Quantity and quality of return flows and location of discharge.

3 Describe effects on other water uses resulting from the proposed change

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right The information contained in this application is true to the best of my knowledge

I understand that any willful misrepresentations made in this application may result in voiding its approval.

M Todd Parker
(Signature of Applicant)

Subscribed and sworn to before me this 31 day of December, 19 90

Lynn Wardrow
(Notary Public)

My commission expires 4/28/92

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by JT Date 1-15-91 Protest filed by _____

Prelim. check by KW Fee #50.00

Receipted by AWJ #E015603 Date 1-16-91

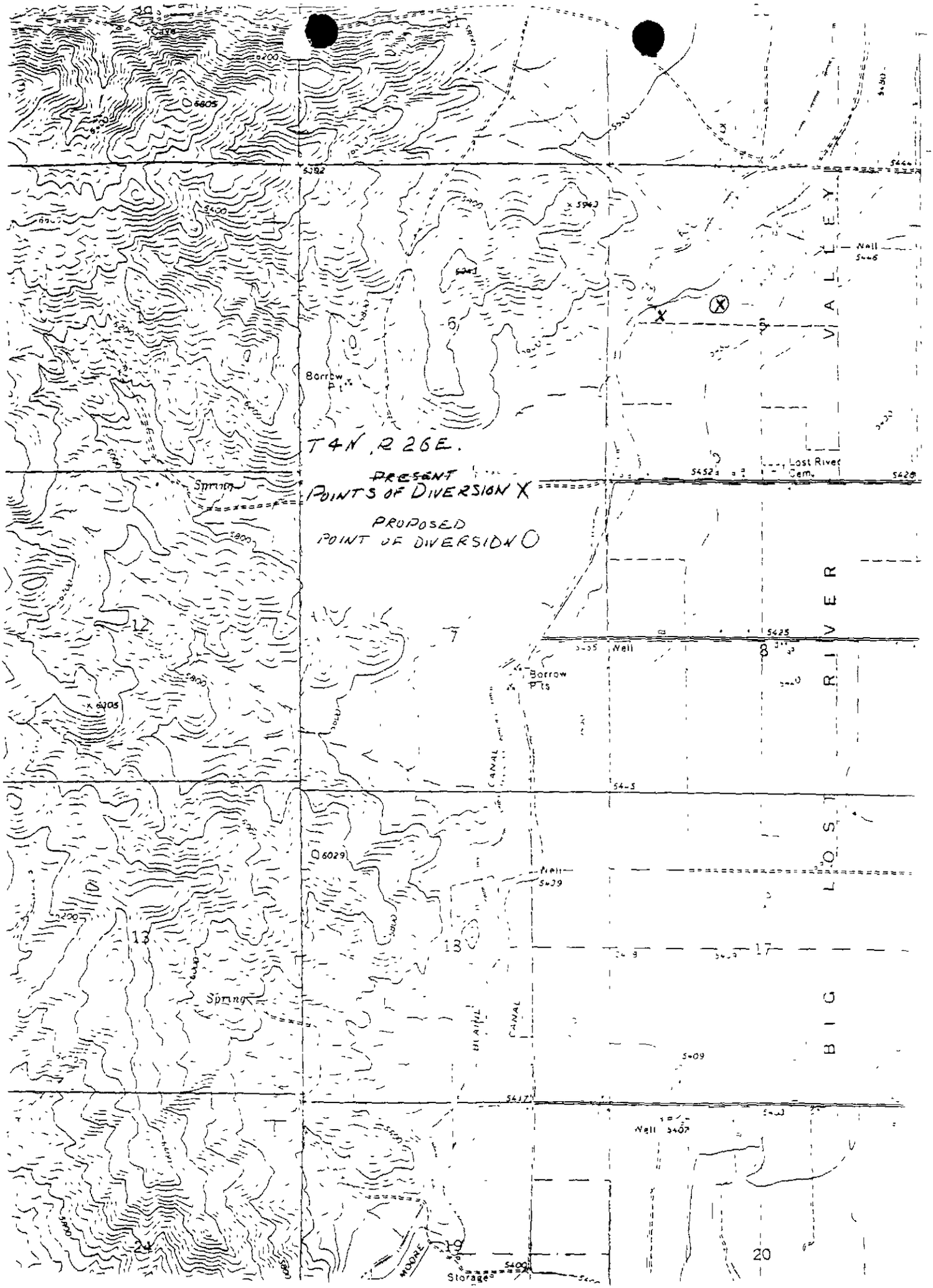
Published in Arco Advocate & Statewide Copies of protest forwarded by _____

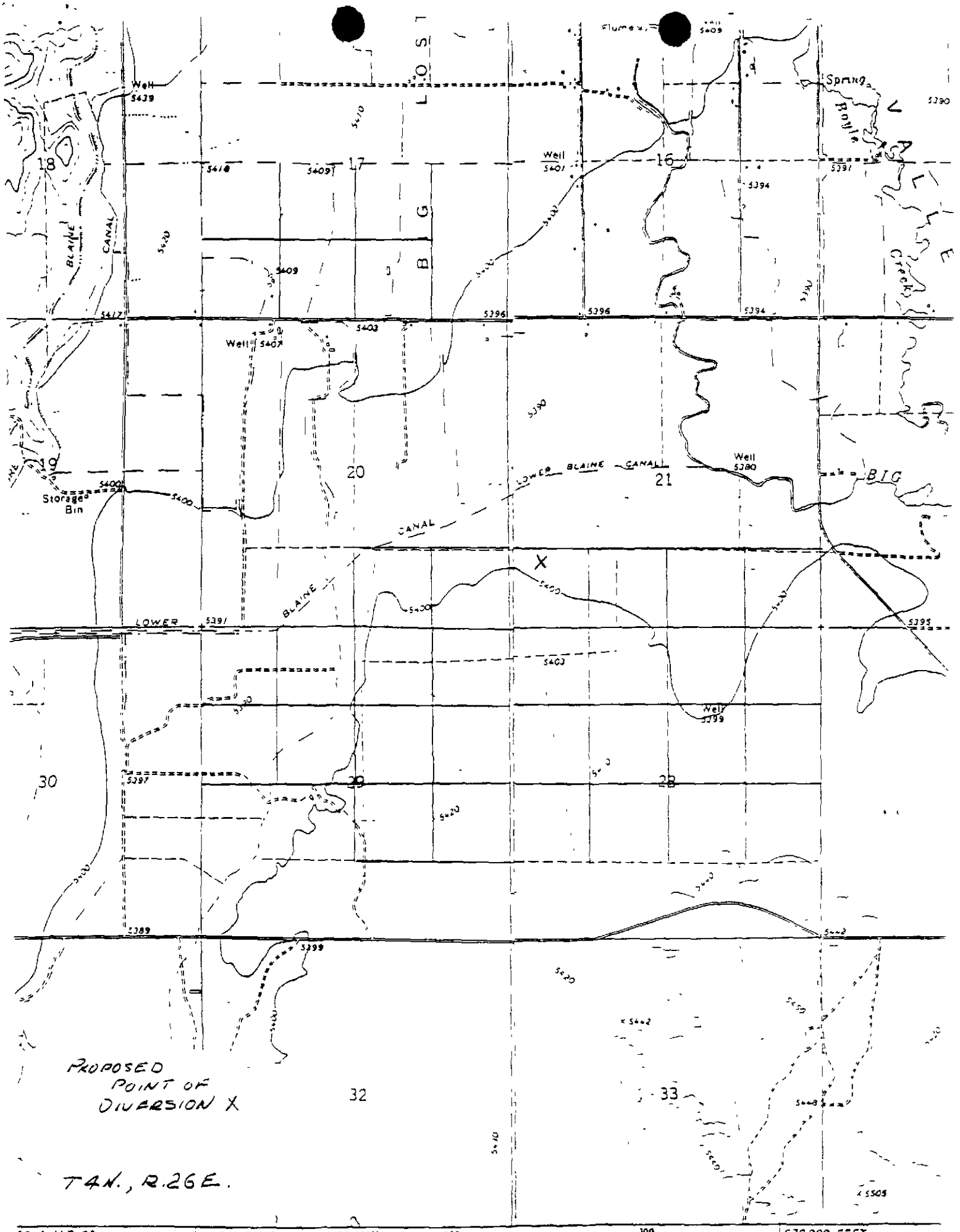
Pub. dates 3-7 & 14-91 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

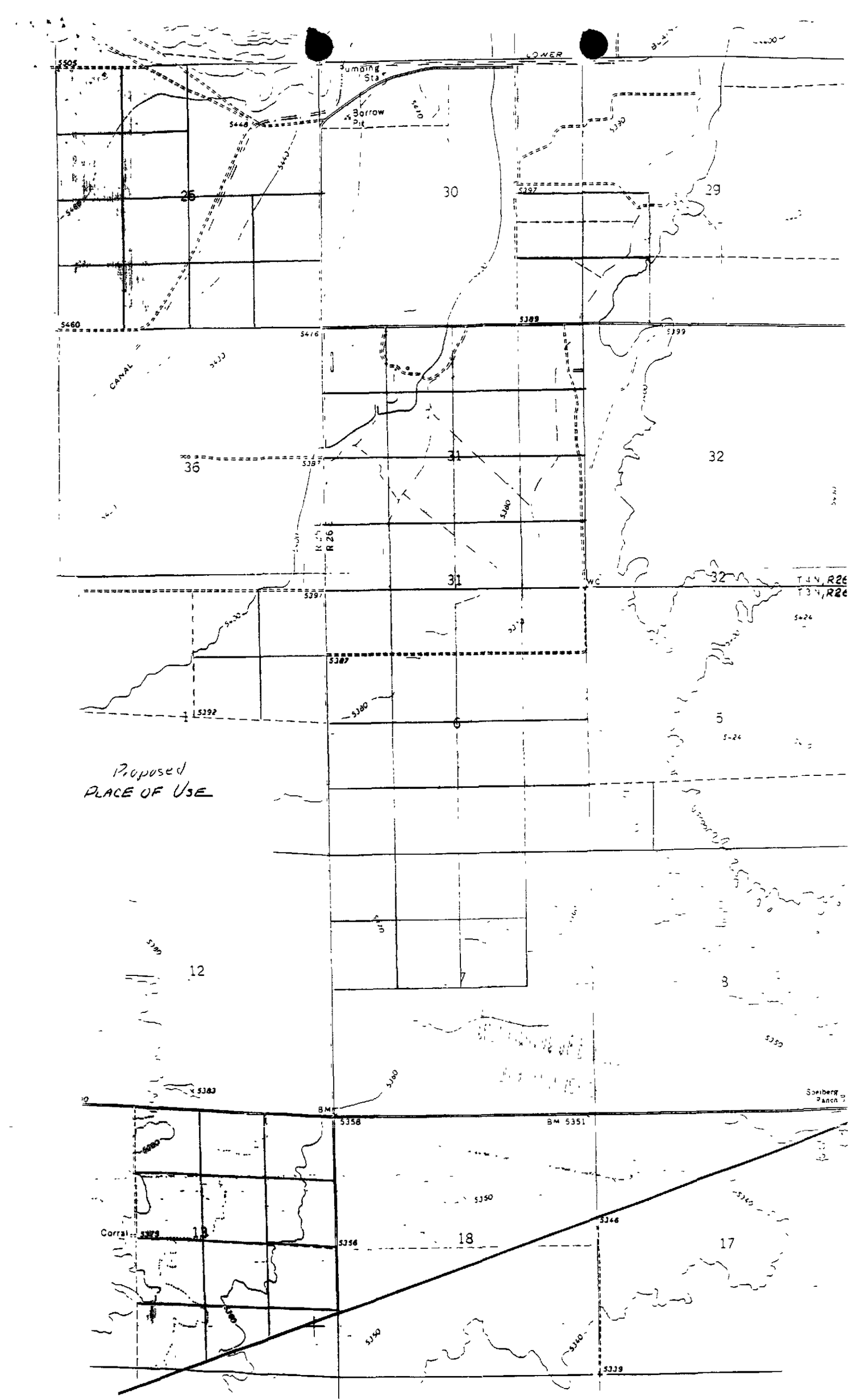

T4N, R26E.
PRESENT POINTS OF DIVERSION X
PROPOSED POINT OF DIVERSION O
Borrow Pit
Spring
Well
Lost River Cem.
Borrow Pits
CANAL
Spring
Storage
MOORE
VALLEY
RIVER
LOST
BIG



25 & ALT 93 © INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1977 113°22'30" 670 000 FEET

ROAD CLASSIFICATION

Mapped, edited, and published by the Geological Survey


Pumping Sta.
Borrow Pit
LOWER
CANAL
25
30
29
36
31
32
6
5
12
7
8
18
17
13
Proposed
PLACE OF USE

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3812/WATER RIGHT NO.'S 34-07080A, 34-07136 AND 34-07169 IN THE NAME OF M. TODD PERKES AND JUEL AIKELE	**FINAL MEMORANDUM DECISION AND ORDER**

A hearing was conducted on May 16, 1991 regarding protest filed against application for transfer no. 3468. A proposed memorandum decision and order was issued July 29, 1991, and exceptions were filed by both the applicants and the protestant, Big Lost River Irrigation District (BLRID). The exceptions will be addressed in the following analysis section. The findings of fact and conclusions of law will follow the analysis.

ANALYSIS

Protestants Exceptions

The protestant asked that additional language be included in the decision as follows:

> 1. The use of water on the lands originally licensed under Water Right No.'s 34-07080A, 34-07136, and 34-07169 is hereafter prohibited.
>
> 2. Prior to diverting water under this approval, a measuring device shall be installed and be maintained in good working order as determined by the department at the point of injection into the canal or other delivery system and another shall be installed and maintained at the point of rediversion from the canal or delivery system to the lands to be irrigated. Measuring devices shall be of a type acceptable to the director of the department.
>
> 3. This approval does not constitute an easement or right-of-way across the lands of another; nor does it authorize the use of any canal, ditch, well or pipeline owned by another.
>
> 4. The well in the SW¼NW¼ of Section 5, Township 4 North, Range 26 East of the Boise Meridian from which a portion of the rights to the diversion of water are transferred shall be rendered inoperable. The means used by the applicants to render the well inoperable shall be

a method acceptable to the director of the department. Thereafter, the well shall not be made operable again until the director acknowledges in writing that a valid water right exists to divert water from the well.

5. The rate of diversion from the well located in SW¼SE¼ of Section 21 and the rate of diversion from the well located in SE¼NW¼ of Section 5 shall not have a combined rate of diversion in excess of 12.43 cfs.

6. The operation of the two wells under this transfer shall be under the control of the water master of the water district in which said wells are located.

Irrigation of the lands from which water rights 34-07080A, 34-07136 and 34-07169 are being transferred is prohibited unless other rights are transferred and become appurtenant to the property. The condition will be changed as follows:

> The N½ and SE¼, Section 11, T03N, R25E, B.M. shall not be irrigated with water diverted pursuant to water right no.'s 34-07080A, 34-07136 and 34-07169.

The condition requiring measuring devices at the well and at any rediversion point is appropriate if the groundwater pumped is being commingled with other water, and the diversion from the well and the rediversion from the canal must both be measured. The condition will be changed to read as follows:

> If groundwater under these rights is commingled with water being delivered in canals or ditches, and owned by or delivered to individuals other than Aikele, a measuring device shall be installed and maintained in good working order as determined by the department at the point of injection into the canal or other delivery system and at the point of rediversion from the canal or other delivery system to the lands to be irrigated.

Conditions regarding right-of-way, proper well abandonment, and a limitation of total flow rate to 12.43 cfs are legitimate conditions to the transfer approval. The language suggested by the protestant will be included in the final order with minor modification.

A request that the wells be controlled by the watermaster of the water district is premature. The Snake River Adjudication will ultimately determine conjunctive management of groundwater and surface water. The department will not require watermaster control

of the wells at this time.

Applicants Exceptions

The applicant identified a place of use for each of three water rights sought to be transferred as required by the proposed memorandum decision and order. The places of use proposed by the applicant will be the places of use for the water rights.

The applicants also submitted written comments, although submitted late as exceptions, the comments will still be addressed.

The applicants correctly identify filing no. 34-07296 as an application, because a final decision was never rendered. The text of the decision has been changed to reflect its present status.

The applicants also state that there are limited data regarding the effect of Aikele's well on river flows. While the relationship between ground water and surface water cannot be described in detail, the department has analyzed sufficient data to conclude that the ground water and surface water communicate directly within the Big Lost River Basin. The department can conclude that diversion from the Aikele well will affect, to some degree, the flows in the Big Lost River. The language of finding of fact no. 6 has been modified to state that proper limitations will protect against an increase of water diverted. A portion of conclusion of law no. 10 discussing the relationship between groundwater and surface water has been deleted because it is dicta, and unnecessary to resolve this matter.

These issues may be refined in the Snake River Basin Adjudication, and a plan for conjunctive management established. The department does not intend to administer groundwater diversions in the Big Lost Basin in conjunction with surface water rights until the court orders administration.

The following findings of fact, conclusions of law, and order conclude this matter.

FINDINGS OF FACT

1. Transfer no. 3812 proposes to change the place of use and point of diversion for three water rights, numbered 34-07080A, 34-07136 and 34-07169, all authorizing diversion from groundwater.

The rights are more specifically described as follows:

Right No.	Amount	Point of Diversion	Place of Use	Total Acres
34-07080A	2.67 cfs	SWNW & SENW, S5, T3N, R25E	NE¼, S11, T3N, R25E	160
34-07136	5.50 cfs	SWNW & SENW, S5, T3N, R25E	NW¼, S11, T3N, R25E	160
34-07169	4.48 cfs	SWNW & SENW, S5, T3N, R25E	SE¼, S11, T3N, R25E	160
	12.43 cfs			480

2. The rights all list the same points of diversion. The last license issued, 34-07136, limited total diversion to 12.43 cfs,and limited the rediversion flow rate to 8.49 cfs.

3. The application for transfer proposes to change the place of use to 480 fragmented acres listed in nine sections of land. Land within these sections is listed as a place of use for the following water rights: 34-07122, 34-02315, 34-07035, 34-04086, 34-04085, 34-02472, 34-02429B, 34-02358A, 34-02315, 34-02309, 34-02308, and 34-03373. Additional applications are pending with the Department.

4. The application for transfer proposes continued operation of one well located in the SE¼NW¼, Section 5, T4N, R26E, but proposes to change the other point of diversion to an existing well located in the SW¼SW¼, Section 21, T4N, R26E, B.M. The new proposed point of diversion is an existing well previously drilled by Aikele in 1981 (hereafter referred to as the Aikele well).

5. An application to use the Aikele well, numbered 34-07296, was filed with the Department in 1981 and a proposed decision approving the application was issued in 1989. The proposed decision determined that diversion from the well owned by Aikele would impact river flows unless the well was reconstructed. Condition 2 of the order reads, in pertinent part:

> The well authorized by this permit . . . shall be reconstructed to prevent water from any depth less than 300 feet from entering the well. The well shall be reconstructed with unperforated casing sealed into a clay layer of at least 20 feet thickness, as determined by IDWR, encountered below 300 feet below land surface.

The application was never finally approved by the Director.

6. Groundwater in the Big Lost River basin contributes to surface water flows of the Big Lost River. Pumping in the area of the Aikele well has contributed to declines in groundwater levels, and has depleted flows in the Big Lost River. Water rights which depend on Big Lost River flows and groundwater rights which have been pumped from higher water levels will be detrimentally affected by increased pumping. If Aikele does not increase the diversion rate or acreage irrigated, however, he will not enlarge his use beyond traditional use.

7. The lands to which the water rights are currently appurtenant are enrolled in federal set aside programs, and will not be irrigated until the set aside period expires. Aikele has agreed to lease the water rights from Perkes for the duration of the set aside enrollment, although the term of the enrollment is not clear from the record.

8. The intent of this transfer is to combine water diverted pursuant to these three rights with water diverted and applied to Aikele's irrigated property.

9. Aikele testified that he is not able to divert sufficient water pursuant to his existing water rights to irrigate all of the land proposed as a place of use. He testified that during most years, some of his land is enrolled in set aside, and is not irrigated. He testified, however, that his total set aside acreage has not exceeded 480 acres, which is the number of acres authorized for irrigation under the three rights sought to be transferred.

10. Aikele has diverted water from the well located in Section 21 without a water right. This transfer is an attempt to legalize use from the well without complying with conditions of approval contained in the proposed memorandum decision and order for application no. 34-07296.

11. General allegations of direct interference were expressed by a couple of well owners who own wells approximately a mile to two miles away from the Aikele well. No technical data were submitted to support the allegations of interference. Aikele's

well is sufficiently remote from the other wells that any lowering in the level of wells in the area is not a result of direct well to well interference, but could be a result of continued drought conditions coupled with pumping which exceeds the recharge during dry years.

12. During the testimony of Juel Aikele, the attorney for Aikele referred to applicant's exhibit no. 1 which depicts Aikele's irrigated lands in pink and yellow. He represented that Aikele irrigates 579 acres within the pink shaded area, and 1735 acres within the yellow marked area, or a total of 2314 acres within the pink and yellow bounded areas.

13. Attachment "A", which is affixed to the end of this decision, lists all of the water rights and acres authorized to be irrigated for the land shown in pink and yellow on applicant's exhibit no. 1. These 40-acre tracts also correspond to the 40-acre tracts with fragmented irrigated acres listed as the proposed place of use. According to Department records, Aikele is only authorized to irrigate 1459 acres pursuant to existing water rights. According to the admission of Aikele's attorney, Aikele is currently irrigating 855 acres which are not approved as a place of use by the Department's recorded water rights.

14. Aikele filed Snake River Basin adjudication claims which allege the right to irrigate expanded acreage, and which may name the 855 acres which are not currently sanctioned as an authorized place of use.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

> The director of the department of water resources shall examine all of the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is in the local public interest as defined in Section 42-203A, Idaho Code; . . .

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use and will not injure other water rights.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The application for transfer, as prepared, would be acceptable as part of a permissible place of use proposal for the land Aikele irrigates, if all of the irrigated land was identified as a place of use recognized by existing water rights. The records of the Department, however, show that 855 acres of the lands Aikele has irrigated are not authorized for irrigation.

5. The water rights sought to be transferred only authorize the irrigation of 480 acres. Irrigation of 855 acres pursuant to the three rights sought to be transferred would cause an enlargement of use.

6. Because of declining groundwater levels in the Big Lost River area, and the relationship of surface to ground water, the enlargement of use will result in injury to other water rights.

7. The Department of Water Resources will approve this application for transfer upon identification by the applicant of 160 acres that will be irrigated by each of the water rights sought to be transferred, for a total of 480 acres. These acres can either be part of the 1459 acres authorized for irrigation pursuant to existing water rights, or may be new acres not identified by existing water rights. Any new acres identified must be contiguously arranged for reasonable irrigation from the proposed points of diversion without any other commingled water. A fragmented place of use, as proposed by the application for transfer, is not permissible.

8. Section 42-1416, Idaho Code, states:

In any basin wide adjudication, the following shall apply:

(2) expansion of use after acquisition of a valid unadjudicated water right in violation of the mandatory permit requirements shall be presumed to be valid and to have created a water right with a priority date as of the completion of the expansion in the absence of injury to other appropriators.

9. Adjudication claims filed by Aikele allege expanded irrigated acreage, presumably justified pursuant to Idaho Code § 42-1416. The statute does not require that the Department or the court recognize the enlargement, however, but simply creates a presumption in the filing of the claim.

10. As an administrative agency, the Department cannot endow a transfer application with a presumption that an enlargement will be recognized as a perfected water right. The presumption is only granted to the court to apply in its fact finding capacity.

11. The presumption, and the issue of whether the claims, as filed by Aikele, will cause injury to other appropriators, is left to be considered by the court.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 3812/water right no.'s 34-07080A, 34-07136 and 34-07169 is APPROVED provided the place of use is limited as follows:

Right No.	Description	Acres
34-07080A	S½N½, Section 6, T3N, R26E, B.M.	160
34-07136	N½S½, Section 6, T3N, R26E, B.M.	160
34-07169	S½S½, Section 6, T3N, R26E, B.M.	160

IT IS FURTHER ORDERED THAT water right no.'s 34-07080A, 34-07136 and 34-07169 are subject to the following conditions:

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

2. Failure to comply with the conditions of this transfer is cause for the Director to issue an order to show cause why approval of the transfer should not be rescinded.

3. Approval of this transfer does not preclude the opportunity for review of the validity of the water rights in the ongoing Snake River Basin Adjudication.

4. If the Snake River Adjudication does not recognize enlargement describing the approved place of use irrigated by the rights transferred, upon demand for return of the water by Todd Perkes, or his successors, Aikele shall discontinue irrigating the approved place of use until water rights are obtained which authorize irrigation of the approved place of use.

5. The N½ and SE¼, Section 11, T03N, R25E, B.M. shall not be irrigated with water diverted pursuant to water right no.'s 34-07080A, 34-07136, and 34-07169.

6. If groundwater diverted under these rights is commingled with water being delivered in canals or ditches, and owned by or delivered to individuals other than Aikele, a measuring device shall be installed and maintained in good working order as determined by the department at the point of injection into the canal or other delivery system and at the point of rediversion from the canal or other delivery system to the lands to be irrigated.

7. This approval does not constitute an easement or right-of-way across the lands of another; nor does it authorize the use of any canal, ditch, well or pipeline owned by another.

8. The well in the SW¼NW¼ of Section 5, Township 4 North, Range 26 East of the Boise Meridian from which a portion of the rights to the diversion of water are transferred shall be rendered inoperable. The means used by the applicants to render the well inoperable shall be a method acceptable to the director of the department. Thereafter, the well shall not be made operable again until the director acknowledges in writing that a valid water right exists to divert water from the well.

9. The combined rate of diversion authorized by permits 34-07080A, 34-07136 and 34-07169 is limited to 12.43 cfs.

Dated this 27TH day of July, 1992.

R. KEITH HIGGINSON
Director

ATTACHMENT A

PAGE: 1 PLACE OF USE 1/4 1/4 T-R-S REPORT 06/21/91

WR-NUMBER	NAME	STG	SOURCE	T	R	S	NE NE	NE NW	NE SW	NE SE	NW NE	NW NW	NW SW	NW SE	SW NE	SW NW	SW SW	SW SE	SE NE	SE NW	SE SW	SE SE	SUM
3407122	TIMBERLINE BEEF INC.	L	GROUNDWATER	03N	25E	1	33	33	33	33													
		TOTALS					33	33	33	33													132
3404085	MAESTAS	S	GROUNDWATER	04N	25E	25									1	8							
3404086	MAESTAS	S	GROUNDWATER	04N	25E	25											5						
3407035	TIMBERLINE BEEF INC.	L	GROUNDWATER	04N	25E	25					33	33	33	40	40	33	33	33	33	40	33	33	
		TOTALS									33	33	33	40	40	40	38	33	33	40	33	33	429
3402315	AIKELE	L	GROUNDWATER	03N	26E	6	40	40			40												
3402472	AIKELE	L	GROUNDWATER	03N	26E	6						39											
		TOTALS					40	40			40	39											159
3402272	AIKELE	L	WASTE WATER	04N	26E	29										38							
3402308	AIKELE	L	WASTE WATER	04N	26E	29										40							
3402309	AIKELE	L	GROUNDWATER	04N	26E	29										40							
3402358A	AIKELE	L	GROUNDWATER	04N	26E	29										35	8						
		TOTALS														40	8						48
[redacted]J2272	AIKELE	L	WASTE WATER	04N	26E	30													40				
3402308	AIKELE	L	WASTE WATER	04N	26E	30													40				
3402358A	AIKELE	L	GROUNDWATER	04N	26E	30													40			39	
		TOTALS																	40			39	79

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of July, 1992, I mailed a true correct copy of the Final Memorandum Decision and Order, postage prepaid, to the following individuals:

Roger Ling
P.O. Box 396
Rupert, ID 83350

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Lawrence Babcock
Moore, ID 83255

Karen L. Gustafson
Secretary, Records Manager

MICROFILMED
JUL 29 1992

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3812/WATER RIGHT NOS. 34-7080A, 34-7136 AND 34-7169 IN THE NAME OF M. TODD PERKES AND JUEL AIKELE

ORDER ISSUING PROPOSED MEMORANDUM DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Gary Spackman, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral agruments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 29th day of July, 19 91.

R. KEITH HIGGINSON
Director

MICROFILMED
JUL 29 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3812/WATER RIGHT NOS. 34-7080A, 34-7136 AND 34-7169 IN THE NAME OF M. TODD PERKES AND JUEL AIKELE	PROPOSED MEMORANDUM DECISION AND ORDER

A hearing was conducted on May 16, 1991, regarding protests filed against application for transfer no. 3468. A hearing having been held, the hearing officer as a representative of the Director of the Department of Water Resources, proposes the following findings, conclusions and order:

FINDINGS OF FACT

1. Transfer no. 3812 proposes to change the place of use and point of diversion for three water rights, numbered 34-7080A, 34-7136 and 34-7169, all authorizing diversion from ground water. The rights are more specifically described as follows:

Right No.	Amount	Point of Diversion	Place of Use	Total Acres
34-7080A	2.67 cfs	SWNW & SENW, S5, T3N, R25E	NE¼, S11, T3N, R25E	160
34-7136	5.50 cfs	SWNW & SENW, S5, T3N, R25E	NW¼, S11, T3N, R25E	160
34-7169	4.48 cfs	SWNW & SENW, S5, T3N, R25E	SE¼, S11, T3N, R25E	160
	12.43 cfs			480

2. The rights all list the same points of diversion. The last license issued, 34-7136, limited total diversion to 12.43 cfs, and limited the rediversion flow rate to 8.49 cfs.

3. The application for transfer proposes to change the place of use to 480 fragmented acres listed in nine sections of

land. Land within these sections is listed as a place of use for the following water rights: 34-7122, 34-2315, 34-7035, 34-4086, 34-4085, 34-2472, 34-2429B, 34-2358A, 34-2315, 34-2309, 34-2308, and 34-2272. Additional applications are pending with the Department, and permit no. 34-7296 has not been developed as approved.

4. The application for transfer proposes continued operation of one well located in the SE¼NW¼, Section 5, T4N, R26E, but proposes to change the other point of diversion to an existing well located in the SW¼SW¼, Section 21, T4N, R26E, B.M. The new well sought to be used is an existing well previously drilled by Aikele in 1981 (hereafter referred to as the Aikele well).

5. An application to use the well, numbered 34-7296, was filed with the Department in 1981, and a decision approving the application was issued in 1989. The decision determined that diversion from the well owned by Aikele would impact river flows unless the well was reconstructed. Condition 2 of the order reads, in pertinent part:

> The well authorized by this permit . . . shall be reconstructed to prevent water from any depth less than 300 feet from entering the well. The well shall be reconstructed with unperforated casing sealed into a clay layer of at least 20 feet thickness, as determined by IDWR, encountered below 300 feet below land surface.

6. Ground water in the Big Lost River basin contributes to surface water flows of the Big Lost River. Pumping in the area of the Aikele well has contributed to declines in ground water levels, and has depleted flows in the Big Lost River. Water rights which depend on Big Lost River flows and ground water rights which have been pumped from higher water levels will be detrimentally affected by increased pumping.

7. The lands to which the water rights are currently appurtenant are enrolled in federal set aside programs, and will not be irrigated until the set aside period expires. Aikele has agreed to lease the water rights from Perkes for the duration of the set aside enrollment, although the term of the enrollment is not clear from the record.

8. The intent of this transfer is to combine water diverted pursuant to these three rights with water diverted and applied to Aikele's irrigated property.

9. Aikele testified that he is not able to divert sufficient water pursuant to his existing water rights to irrigate all of the land proposed as a place of use. He testified that during most years, some of his land is enrolled in set aside, and is not irrigated. He testified, however, that his total set aside acreage has not exceeded 480 acres, which is the number of acres authorized for irrigation under the three rights sought to be transferred.

10. Aikele has diverted water from the well located in Section 21 without a water right. This transfer is an attempt to legalize use from the well without complying with conditions of approval dictated by permit no. 34-7296.

11. Some general allegations of direct interference were expressed by a couple of well owners who own wells approximately a mile to two miles away from the Aikele well. No technical data was submitted to support the allegations of interference. The distance between Aikele's well and the other wells makes it likely that any lowering in the level of wells in the area is not a result of direct well to well interference, but could be a result of continued drought conditions coupled with pumping which exceeds the recharge during dry years.

12. During the testimony of Juel Aikele, the attorney for Aikele referred to applicant's exhibit no. 1 which depicts Aikele's irrigated lands in pink and yellow. He represented that Aikele irrigates 579 acres within the pink shaded area, and 1735 acres within the yellow marked area, or a total of 2314 acres within the pink and yellow bounded areas.

13. Attachment "A", which is affixed to the end of this decision, lists all of the water rights and acres authorized to be irrigated for the land shown in pink and yellow on applicant's exhibit no. 1. These 40-acre tracts also correspond to the 40-acre tracts with fragmented irrigated acres listed as the proposed place of use. According to Department records, Aikele is only authorized to irrigate 1459 acres pursuant to existing water rights. According to the admission of Aikele's attorney, Aikele is currently irrigating 855 acres which are not approved as a place of use by the Department's recorded water rights.

14. Aikele has filed Snake River Basin adjudication claims which allege the right to irrigate expanded acreage, and which may name the 855 acres which are not currently sanctioned as an authorized place of use.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, sets forth the criteria that the Department can consider in determining whether an application for transfer should be approved:

> The director of the department of water resources shall examine all of the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is in the local public interest as defined in Section 42-203A, Idaho Code; . . .

2. The applicant carries the burden of coming forward with evidence that his proposed transfer will not result in an enlargement in use and will not injure other water rights.

3. All parties carry the burden of coming forward with the evidence regarding matters of local public interest, but the applicant bears the burden to show that his proposal is in the local public interest, or that public interests which favor the proposal are of greater worth than the public interests with which it conflicts.

4. The application for transfer, as prepared, would be a legitimate attempt to spread the water over all of the land Aikele irrigates, if all of the irrigated land was identified as a place of use recognized by existing water rights. The records of the Department, however, show that 855 acres of the lands Aikele has irrigated are not authorized for irrigation.

5. The water rights sought to be transferred only authorize the irrigation of 480 acres. Irrigation of 855 acres pursuant to the three rights sought to be transferred would cause an enlargement of use.

6. Because of declining ground water levels in the Big Lost River area, and the relationship of surface to ground water, the enlargement of use will result in injury to other water rights.

7. The Department of Water Resources will approve this application for transfer upon identification by the applicant of 160 acres that will be irrigated by each of the water rights sought to be transferred, for a total of 480 acres. These acres can either be part of the 1459 acres authorized for irrigation pursuant to existing water rights, or may be new acres not identified by existing water rights. Any new acres identified

must be contiguously arranged for reasonable irrigation from the proposed points of diversion without any other commingled water.

A fragmented place of use, as proposed by the application for transfer, is not permissible.

8. Idaho Code § 42-1416 states:

> In any basin wide adjudication, the following shall apply:
>
> (2) expansion of use after acquisition of a valid unadjudicated water right in violation of the mandatory permit requirements shall be presumed to be valid and to have created a water right with a priority date as of the completion of the expansion in the absence of injury to other appropriators.

9. Adjudication claims filed by Aikele allege expanded irrigated acreage, presumably justified pursuant to Idaho Code § 42-1416. The statute does not require that the Department or the court recognize the enlargement, however, but simply creates a presumption in the filing of the claim. The statute also states that the presumption should apply only in the absence of injury to other appropriators.

10. As an administrative agency, the Department cannot endow a transfer application with a presumption that an enlargement will be recognized as a perfected water right. The presumption is only granted to the court to apply in its fact finding capacity. Furthermore, the Department finds that the enlargement of use in the ground water right generally injures surface right holders in the Big Lost River, and also injures ground water right holders because the water table is lowered as a result of the enlargement.

11. The presumption, however, and the issue of whether the claims, as filed by Aikele, will cause injury to other appropriators, is left to be considered by the court.

ORDER

IT IS HEREBY ORDERED that within sixty (60) days of the date of this decision, Aikele shall identify 160 acres as a place of use for water right no. 34-7080A, 160 acres as a place of use for water right no. 34-7136, and 160 acres as a place of use for water right no. 34-7169. If new acres not described by existing rights are proposed as a place of use, the new acres must be contiguously arranged for reasonable irrigation from the proposed points of diversion without any other commingled water.

IT IS FURTHER ORDERED that if the information is not provided to the Department and the respective parties within sixty (60) days of the date of this decision, the approval of this application for transfer will be RESCINDED.

IT IS FURTHER ORDERED that, upon submittal of the information within sixty (60) days of the date of this decision, and approval of the place of use by the Department, this application for transfer is APPROVED, subject to the following conditions:

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

2. Failure to comply with the conditions of this transfer is cause for the Director to issue an order to show cause why the approval of the transfer should not be rescinded.

3. Approval of this transfer does not preclude the opportunity for review of the validity of the water rights in the ongoing Snake River Basin Adjudication.

4. This decision is not conclusive regarding the presumptions of enlargement contained in Idaho Code § 42-1416. This decision finds, however, that the original proposal would result in an enlargement of use which would injure other water users.

5. If the Snake River Adjudication does not recognize enlargement describing the 480 acres (or new acres not identified by existing rights, whichever is less,) irrigated by the rights sought to be transferred, upon demand for return of the water by Todd Perkes, or his successors, Aikele shall discontinue irrigating the 480 acres (or new acres not identified by existing rights, whichever is less,) identified as a place of use.

Dated this 29th day of July, 1991.

Gary Spackman

GARY SPACKMAN, Hearing Officer
Department of Water Resources

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of July, 1991, I mailed a true and correct copy of the Proposed Memorandum Decision and Order and the Order Issuing Proposed Memorandum Decision, postage prepaid, to the following individuals:

Roger Ling
P.O. Box 396
Rupert, ID 83350

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Lawrence Babcock
Moore, ID 83255

JENNIFER SEIFERT
Secretary

RECEIVED
JUL 29 1992

RECEIVED
MAR 1 0 1991
Department of Water Resources
Eastern District Office

AFFIDAVIT OF PUBLICATION

I, Colleen Babcock
of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho since March, 1909, do solemnly swear that a copy of this notice, per clipping attached was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof

for 2 consecutive weeks, commencing with the issue dated March 7, 1991

and ending with the issue dated

March 14, 1991
Colleen Babcock

STATE OF IDAHO)
COUNTY OF BUTTE)

On this 14 day of March
in the year of 1991, before me, a Notary Public,
personally appeared
Colleen Babcock
known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn declared that the statements therein are true, and acknowledged to me that he executed the same

Notary Public for Idaho
Residing at Arco, ID
My commission expires 12-17-91

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO.'S 34-7080A, 34-7136, & 34-7169

NOTICE IS HEREBY GIVEN that M. Todd Perkes & Juel Aikele have applied to the Department of Water Resources to change point of diversion and place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

LICENSE NO. 34-7080A
AMOUNT 2 67 cfs
PRIORITY. 9-23-1974
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NE, SEC. 11, T 3N, R 25E, B.M.

LICENSE NO 34-7136
AMOUNT: 5 5 cfs
PRIORITY: 3-26-1976
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NW, SEC. 11, T 3N, R 25E, B.M.

LICENSE NO. 34-7169
AMOUNT 4 48 cfs
PRIORITY: 1-6-1977
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the SE, SEC. 11, T 3N, R 25E, B M.

These rights when combined shall not exceed 8.49 cfs at the point of rediversion.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the SENW, SEC 5; SWSW, SEC. 21, T 4N, R 26E, BUTTE COUNTY, and used from 4-1 to 11-1 to irrigate 480 acres of land within the NE, SEC. 1, E½, E½W½, SEC. 13, T 3N, R 25E; W½, SE, SEC. 25, T 4N, R 25E; SWSW, SEC. 5, SEC. 6, W½N½, SENW, SEC. 7, T 3N, R 26E; W½SW¼, SEC 29, E½SE¼, SEC. 30, SEC. 31, T 4N, R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave , Idaho Falls, ID 83401, on or before March 25, 1991.

R Keith Higginson
Director

Published in the ARCO ADVERTISER on MARCH 7 & 14, 1991

JUL 1 9

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO.'S 34-7080A, 34-7136, & 34-7169

NOTICE IS HEREBY GIVEN that M. Todd Perkes & Juel Aikele have applied to the Department of Water Resources to change point of diversion and place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

LICENCE NO. 34-7080A
AMOUNT: 2.67 cfs
PRIORITY: 9-23-1974
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NE, SEC. 11, T 3N, R 25E, B.M.

LICENSE NO. 34-7136
AMOUNT: 5.5 cfs
PRIORITY: 3-26-1976
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NW, SEC. 11, T 3N, R 25E, B.M.

LICENCE NO. 34-7169
AMOUNT: 4.48 cfs
PRIORITY: 1-6-1977
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the SE, SEC. 11, T 3N, R 25E, B.M.

These rights when combined shall not exceed 8.49 cfs at the point of rediversion.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the SENW, SEC. 5; SWSW, SEC. 21, T 4N, R 25E, BUTTE COUNTY, and used from 4-1 to 11-1 to irrigate 480 acres of land within the NE, SEC. 1; E½, E½W½, SEC. 13, T 3N, R 25E; W½, SE, SEC. 26, T 4N, R 25E; SWSW, SEC. 5, SEC. 6, W½NW¼, SENW, SEC. 7, T 3N, R 26E; W½SW¼, SEC. 29, E½SE¼, SEC. 30, SEC. 31, T 4N, R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before March 25, 1991.

R. Keith Higginson
Director

PUBLISH: Thursday, March 7 and 14, 1991

Affidavit of Publication

No 22095

STATE OF IDAHO }
COUNTY OF TWIN FALLS } ss

I, Linda Capps McEwen being first duly sworn upon oath, depose and say that I am Deputy Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive issues, commencing with the issue dated March 7, 1991, and ending with the issue dated March 14, 1991.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published, and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 19 day of March in the year of 1991, before me, a Notary Public, personally appeared Linda Capps McEwen, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Notary Public for Idaho
Residing at Twin Falls County
My commission expires 7/1/94

$25

TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

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Times _____ Lines _____

Tab Lines _____

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MAR 25 1991
Department of Water Resources
Eastern District Office

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only

23148

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO.'s 34-7080A, 34-7136, & 34-7169

NOTICE IS HEREBY GIVEN that M. Todd Perkes & Juel Aikele have applied to the Department of Water Resources to change point of diversion and place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recored as follows:

LICENSE NO. 34-7080A
AMOUNTS: 2.67 cfs
PRIORITY: 9-23-1974
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NW, SEC. 11, T 3N, R 25E, B.M.

LICENSE NO. 34-7166
AMOUNT: 5.5 cfs
PRIORITY: 3-26-1976
POINT (S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used form 4-1 to 11-1 to irrigate 160 acres within the NW, SEC. 11, T 3N , R 25E, B.M

LINCENSE NO. 34-7169
AMOUNT: 4.48 cfs
PRIORITY: 1-6-1977
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the SE, Sec. 11, T 3N, R 25E, B.M.

These rights when combined shall not exceed 8.49 cfs at the point of rediversion.

TO BE CHANGED AS FOLLOWS:
The water will be diverted from the SENW, SEC 5; SWSW, SEC. 21 T 4N, R 26E, BUTTE COUNTY, and used from 4-1 to 11-1 to irrigate 480 acres of land within the NE, SEC. 1, E1/2, E1/2W1/2, SEC. 13, T 3N, R 25E; W1/2, SE, SEC. 25, T 4N, R 25E; SWSW, SEC. 5, SEC. 6, W1/2N1/2, SENW, SEC. 7, T 3N, R 26E; W1/2SW1/4, SEC. 29, E1/2SE1/4, SEC. 30, SEC. 31, T 4N, R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Soup Ave., Idaho Falls, ID, 83401, on or before March 25, 1991.

R Keith Higginson
Director

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

_____, being duly sworn, deposes and says, I am the _____ of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, publishers of the LEWISTON MORNING TRIBUNE, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established paper and has been published regularly and issued regularly at least once a day for more than 21 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the

_____

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, _____ time(s). Publication being on _____, or once a _____ for _____ consecutive _____, the first publication thereof being on the _____, and the last publication thereof being on the _____, and said _____

_____

was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Paul Lawrence

SUBSCRIBED AND SWORN BEFORE ME THIS THE _____ day of _____

JUL 29 1992

_____
Notary Public in and for the State of Idaho, residing at Lewiston, therein.

RECEIVED

MAR 18 1991

Department of Water Resources
Eastern District Office

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due
73.20

Account Number	Identification
100564	Proposed Change of Water Right

Ordered By	P.O Number	Rate	Run Dates
Rita Bodell		nt 1	March 7, 14, 1991

Idaho Dept. of Water Resources
Eastern Region
150 Shoup, Suite 15
Idaho Falls ID 83402

Estimated Inches	Real Inches
# Affidavits	Legal Number
1	7777

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO.'S 34-7080A, 34-7136, & 34-7169

NOTICE IS HEREBY GIVEN that M. Todd Perkes & Juel Aikele have applied to the Department of Water Resources to change point of diversion and place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

LICENSE NO. 34-7080A
AMOUNT: 2.67 cfs
PRIORITY: 9-23-1974
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres wilhin the NE, SEC. 11, T 3N, R 25E, B.M.

LICENSE NO. 34-7136
AMOUNT: 5.5 cfs
PRIORITY: 3-26-1976
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NW, SEC. 11, T 3N, R 25E, B.M

LICENSE NO. 34-7169
AMOUNT: 4.48 cfs
PRIORITY: 1-6-1977
POINT(S) OF DIVERSION: SWNW, SENW, SEC 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the SE, SEC. 11, T 3N, R 25E, B.M.
These rights when combined shall not exceed 8.49 cfs at the point of rediversion
TO BE CHANGED AS FOLLOWS
The water will be diverted from the SENW, SEC. 5; SWSW, SEC. 21, T 4N, R 26E, BUTTE COUNTY, and used from 4-1 to 11-1 to irrigate 480 acres of land within the NE, SEC. 1, E1/2, E1/2W1/2, SEC. 13, T 3N, R 25E; W1/2, SE, SEC. 25, T 4N, R 25E; SWSW, SEC. 5, SEC. 6, W1/2N1/2, SENW, SEC. 7, T 3N, R 26E; W1/2SW1/4, SEC. 29, E1/2SE1/4, SEC. 30, SEC. 31, T 4N, R 26E, B.M.
Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before March 25, 1991.
R. Keith Higginson,
Director

Pub. Mar. 7, 14, 1991 7777

RB

Denise Richardson, being duly sworn, deposes and says That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto, that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for two

☑ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of Mar. 7, 19 91

and ending with the issue of Mar. 13, 19 91

Denise Richardson

STATE OF IDAHO)
ss
COUNTY OF ADA)

On this 14th day of March in the year of 1991, before me, a Notary Public, personally appeared Denise Richardson, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same

Janice Bagley
Notary Public for Idaho
Residing at Boise, ID
My commission expires: May '91

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Transfer No. 3675 of Water Rights 34-7080A, 34-7136, and 34-7169 in the Names of M. TODD PERKES, JUEL AIKELE, and MICHAEL AIKELE and the Cease and Desist Order issued by the Department on June 22, 1990	MEMORANDUM DECISION AND ORDER APPROVING APPLICATION FOR TRANSFER NO. 3675 AND DENYING ATTORNEY'S FEES

On February 14, 1990, M. Todd Perkes, Juel Aikele, and Michael Aikele ("Applicants") filed application for transfer No. 3675 to change the point of diversion and place of use of water right Nos. 34-7080A, 34-7136, and 34-7169. Approval of the application was protested by the Big Lost Irrigation District ("BLID") and by 138 persons signing a petition delivered to the Idaho Department of Water Resources ("Department") by Mr. Lawrence Babcock.

On June 22, 1990, the Department issued an order to Don A. Aikele, Juel Aikele, and Michael Aikele to cease and desist irrigation of land within the S1/2 of the SW1/4 of Section 6, T3N, R26E, BM until a right to do so is obtained or identified. Subsequent correspondence from Mr. Kent Foster, attorney for the Aikeles, indicated that the order would not be complied with and requested approval of application for transfer No. 3675 which, if approved, would authorize irrigation of the land that is the subject of the order to cease and desist. In response, the Department set a combined hearing to consider the application for transfer and the cease and desist order.

The hearing was held on July 26, 1990, in Arco, Idaho. The Applicants and recipients of the order to cease and desist were represented by Mr. Kent Foster. Protestant BLID was represented by Chairman Lewis Rothwell. Mr. Lawrence Babcock acted as spokesman for the protest petition signers. Other petition signers in attendance were given

the opportunity to ask questions and present testimony. At the hearing, Mr. Foster entered a motion seeking a ruling from the Department to require the protestants to pay attorney costs of the Applicants alleging that the issues raised by the protestants were frivolous and without merit. This issue was bifurcated from the other issues allowing a schedule to be entered for briefing the issue of payment of attorney costs, while allowing the record to be closed concerning the other issues of the hearing.

On August 9, 1990, the Department issued a Proposed Memorandum Decision and Order in connection with protested application for transfer No. 3675. On August 28, 1990, the Department received exceptions to the proposed decision from the Applicants.

On September 17, 1990, the Department issued a Proposed Memorandum Decision and Order addressing the motion for attorney's fees. No exceptions were submitted in connection with this proposed decision.

The Director has reviewed the exceptions filed in connection with the proposed decision issued August 9, 1990, and responds to the exception to grant an "extension" that the Director is authorized to specify conditions when granting approvals. The intent, of course, was and is to provide a ready mechanism for the benefit of the Applicants for continued use of the water as proposed in the transfer if authorization to use the water is otherwise obtainable in successive years.

In response to the exceptions, the Director has eliminated condition of approval no. 9) shown in the proposed decision issued August 9, 1990. The matter of payment of a penalty for unauthorized diversion and use of water by the Applicants will be pursued by the Department in a separate action.

FINDINGS OF FACT

1) The rights proposed to be changed by application for transfer No. 3675 are recorded with the department as follows:

License No. 34-7080A authorizes the diversion of 2.67 cubic feet per second ("cfs") of ground water from wells located in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T3N, R25E for the irrigation of 160 acres located in the NE1/4 of Section 11, T3N, R25E. The priority date is September 23, 1974.

License No. 34-7136 authorizes the diversion of 5.50 cfs of ground water from the same wells listed for right No. 34-7080A for the irrigation of 160 acres in the NW1/4 of Section 11, T3N, R25E. The priority date is March 26, 1976.

License No. 34-7169 authorizes the diversion of 4.48 cfs of ground water from the same wells as the above listed two rights for the irrigation of 160 acres in the SE1/4 of Section 11, T3N, R25E. The priority date is January 6, 1977.

Each of the licenses is conditioned that when combined with the other two rights it "shall not provide more than 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of re-diversion located within the SE1/4NE1/4, Section 11, T3N, R25E." Each of the licenses also has the following condition:

> This right in no way grants any right-of-way or easement across the land of another.

Licenses 34-7136 and 34-7080A have the following condition:

> This right shall not provide more than 0.02 cfs per acre for the lands identified above.

License 34-7169 is conditioned as follows:

> This right shall not provide more than 2.68 cfs or 0.017 cfs per acre for the lands identified above.

2) Applicant Perkes testified that the actual location of the point of diversion for each of the licenses is in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E, and that the location has not been changed from that existing prior to issuance of the licenses. Licensing field examinations in the records of the department agree with the testimony.

3) Application for transfer No. 3675 proposes to change the location of the point of diversion of each of the licenses to the SW1/4SW1/4, Section 21, T4N, R26E, a location approximately 3 miles south and 1 mile east of the present actual point of diversion. The application proposes to divert 12.65 cfs for the irrigation of 480 acres in the S1/2N1/2, S1/2, Section 6, T3N, R26E. The new place of use is approximately 1/2 mile north and 1 and 1/2 mile east of the present place of use for the licenses.

4) Notice of application for transfer No. 3675 was advertised in the Arco Advertiser and the Challis Messenger on April 19 and 26, 1990. The protests of BLID and the signed petition were timely received prior to the protest date of May 7, 1990.

5) The following issues were raised concerning application for transfer No. 3675:

-Whether other rights will be injured by the change.

-Whether the change will result in an enlargement in use of the rights.

-Whether the change is in the local public interest.

-Whether the change is consistent with the conservation of water resources in the state of Idaho.

-Whether the rights sought to be changed have been confirmed by license and can be changed under Section 42-222, Idaho Code.

6) The following issues were raised concerning the cease and desist order:

-Has the S1/2SW1/4, Section 6, T3N, R26E been irrigated this season without a valid water right?

-Have the Aikele's continued to irrigate the S1/2SW1/4, Section 6, T3N, R26E after service of the order to cease and desist?

-Should the Department seek enforcement of the order to cease and desist?

-Is the proper forum for considering the order the district court?

7) The hearing officer included in the hearing record a letter submitted by David A. Flesher, Acting County Supervisor of Farmers Home Administration, USDA, indicating FmHA holds a lien on the water rights of transfer No. 3675. Mr. Flesher indicates that transfer of the rights from the mortgaged property would be a violation of the loan and security agreement, and he asks that the processing of the transfer be suspended until concurrence of FmHA is received.

8) Applicant Perkes testified that the water rights proposed to be changed by application for transfer No. 3675 were used until two years ago when the lands were placed in a year-to-year federal set-aside program.

9) Applicant Perkes testified that he owns the water rights to be changed by transfer No. 3675 and the land to which these rights are appurtenant. The Applicants testified that they had entered into an agreement allowing the Aikeles to use the water rights as proposed in transfer No. 3675 on an annual basis with the right to continue on a year-to-year basis.

10) The well to which the rights would be transferred has been used for 8 to 10 years. Juel Aikele testified that less than 12.65 cfs can be diverted from the well as presently constructed.

11) The Big Lost River Basin is in a fourth consecutive season with much below average rain and snowfall. As a result, ground water levels have declined throughout the basin and streamflows have decreased. Information is not currently available to determine the extent to which the operation of specific wells has had an effect upon the streamflow and upon ground water levels.

12) Approval of the application for transfer will not increase the rate or volume of ground water diverted nor increase the acreage irrigated under existing rights.

13) The S1/2SW1/4, Section 6, T3N, R26E, has been irrigated this season without a valid water right and irrigation has continued following service of the order to cease and desist.

14) One or both of the wells from which the water rights are sought to be transferred have been pumped this season for use on land for which the wells are not an authorized point of diversion.

CONCLUSION OF LAW

1) Section 42-222, Idaho Code, provides, in part, that:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; except the director shall not approve a change in the nature of use

from agricultural use where such change would significantly affect the agricultural base of the local area.

2) Approval of application for transfer No. 3675 with appropriate conditions will not result in injury to other rights.

3) Approval of application for transfer No. 3675 with appropriate conditions will prevent an enlargement of the original rights.

4) Approval of application for transfer No. 3675 is in the local public interest and is consistent with the conservation of water in the state of Idaho.

5) Water has been used on the S1/2SW1/4, Section 6, T3N, R26E, without having a valid water right, and the irrigation of this parcel has continued after receipt of an order issued by the Director pursuant to Section 42-351, Idaho Code, to cease and desist.

6) Section 42-351(1), Idaho Code, provides that:

> If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water course or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may file an action seeking injunctive relief or may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's action into compliance with applicable law and with any existing water right.

7) Section 42-352(1), Idaho Code provides that:

> Any person who willfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty to be imposed by the director of water resources not to exceed one hundred dollars ($100) per diversion for each calendar day, or any part of a calendar day, following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to recover said civil penalties.

8) The issue of whether a transfer of the subject water rights constitutes a violation of the loan and security agreement covering the land from which the rights are being transferred is beyond the authority of the Department to determine. Testimony indicates that the lease of the water rights associated with transfer application No. 3675 is on a year-to-year basis. In the event that the FmHA foreclosed on the mortgage, the Department understands that the water rights, although transferred, would remain part of the property subject to the mortgage.

9) Because of the year-to-year lease of water, the transfer must be conditioned to authorize the change in place of use and point of diversion for a similar period.

ORDER

It is therefore ordered that application for transfer No. 3675 be approved and the same is hereby approved, subject to the following conditions and requirements:

1) Approval is effective until November 1, 1990, unless extended by the director. Upon expiration of this approval or any extension thereof, the place of use and point of diversion for water right Nos. 34-7080A, 34-7136 and 34-7169 shall revert to that existing prior to the approval.

2) During the period of this transfer approval or any extension thereof, the use of water on the lands originally licensed and the diversion of water from the original points of diversion under water right Nos. 34-7080A, 34-7136 and 34-7169 is prohibited.

3) Prior to diverting water under this approval, a measuring device shall be installed and maintained in good working condition as determined by the Department at the point of injection into the canal and another shall be installed and maintained at the point of re-diversion from the canal to the lands to be irrigated. The measuring devices shall be of a type acceptable to the director of the Department.

4) This approval does not constitute an easement or right-of-way across the lands of another; nor does it authorize the use of any canal, ditch, well or pipeline owned by another.

5) The rate of diversion from the well located in the SW1/4SW1/4, Section 21, T4N, R26E shall not exceed 12.43 cfs and the rate of re-diversion from the canal to the lands irrigated under this approval shall not exceed 8.49 cfs.

6) The rate of diversion under this approval shall not provide more than 0.02 cfs per acre at the field headgate for the lands actually being irrigated pursuant to this approval when combined with all other rights used on the same land.

7) This approval does not authorize the construction, reconstruction, or modification of any well.

8) The wells in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E from which the rights to the diversion of water are transferred shall be rendered inoperable. The means used by the applicants to render the wells inoperable shall be a method acceptable to the director of the Department. Thereafter, the wells shall not be made operable again until the director acknowledges in writing that a valid right exists to divert water from the wells.

9) The director retains jurisdiction of this matter to extend the expiration date of this approval upon written notice that the lease has been extended; and upon expiration of the approval to order that the rights revert to the points of diversion and places of use existing prior to the approval of transfer No. 3675.

10) Approval of this transfer does not constitute the approval of the FmHA or other entity holding a lien or mortgage on the water rights involved.

11) Violation of the conditions of this approval shall be cause for the director to void this approval.

It is further hereby ordered that the Proposed Order Denying Motion for Attorney's Fees is adopted and issued as the Final Decision and Order regarding the motion for attorney's fees.

DATED this 15TH day of OCTOBER, 1990.

R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 22nd day of October 1990, true and correct copies of the foregoing MEMORANDUM DECISION AND ORDER APPROVING APPLICATION FOR TRANSFER NO. 3675 AND DENYING ATTORNEY'S FEES was mailed, postage prepaid to:

Marshall Todd Perkes
Route 1, Box 110
Arco, ID 83213

Gary Slette
Nelson, Rosholt, Robertson,
Tolman & Tucker
Box 1906
Twin Falls, ID 83303-1906

Lewis Rothwell, Chairman
Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

Juel and Michael Aikele
Route 1
Moore, ID 83255

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

Lawrence Babcock
Box 66
Moore, ID 83255

Rita L. Fleck

RITA L. FLECK
Secretary/Records Manager

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 3675
OF WATER RIGHTS 34-7080A, 34-7136,
AND 34-7169

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Norman C. Young, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral agruments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.
CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

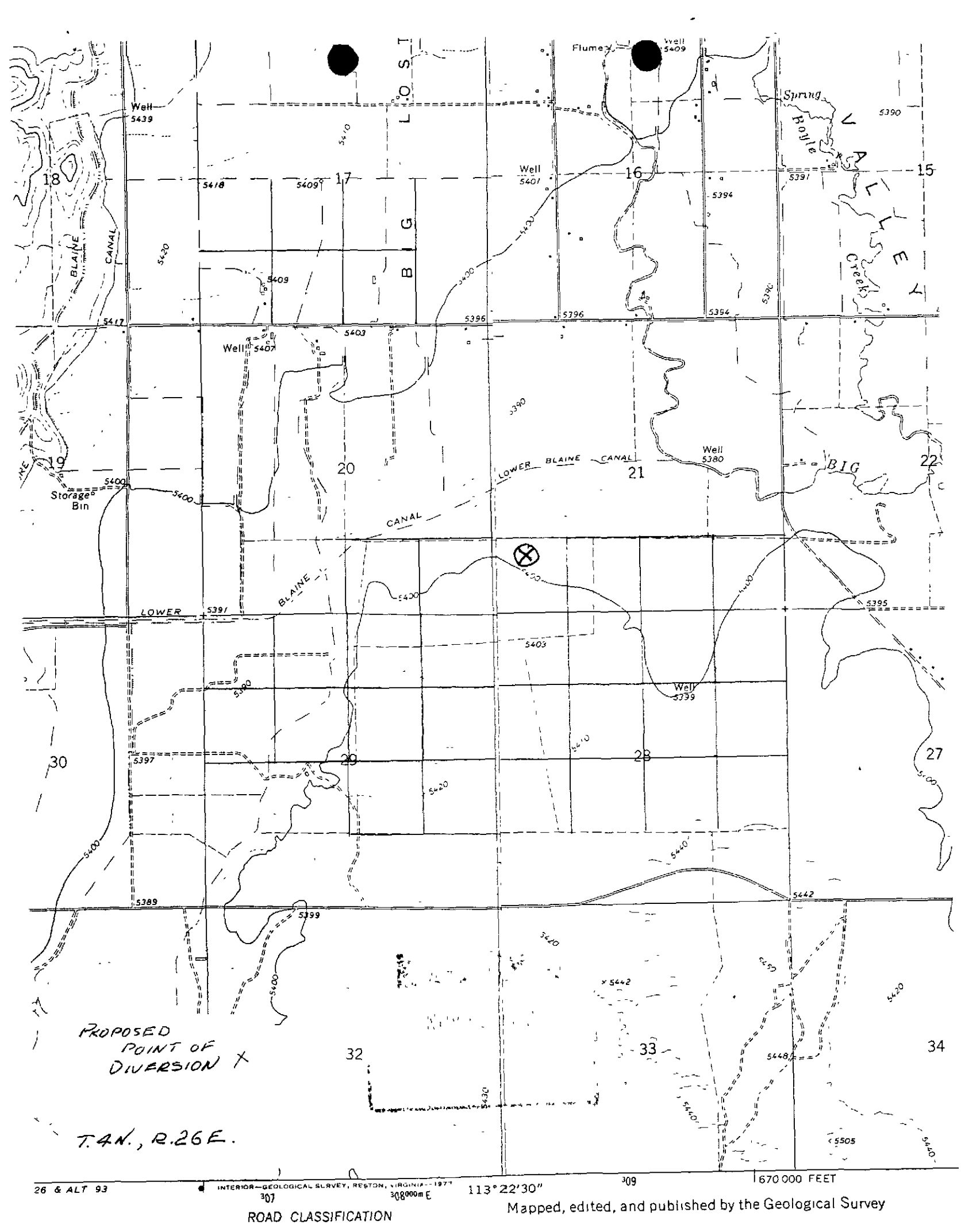
V.
FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 18th day of September, 19 90.

R. KEITH HIGGINSON
Director

MICROFILMED
NOV 01 1990

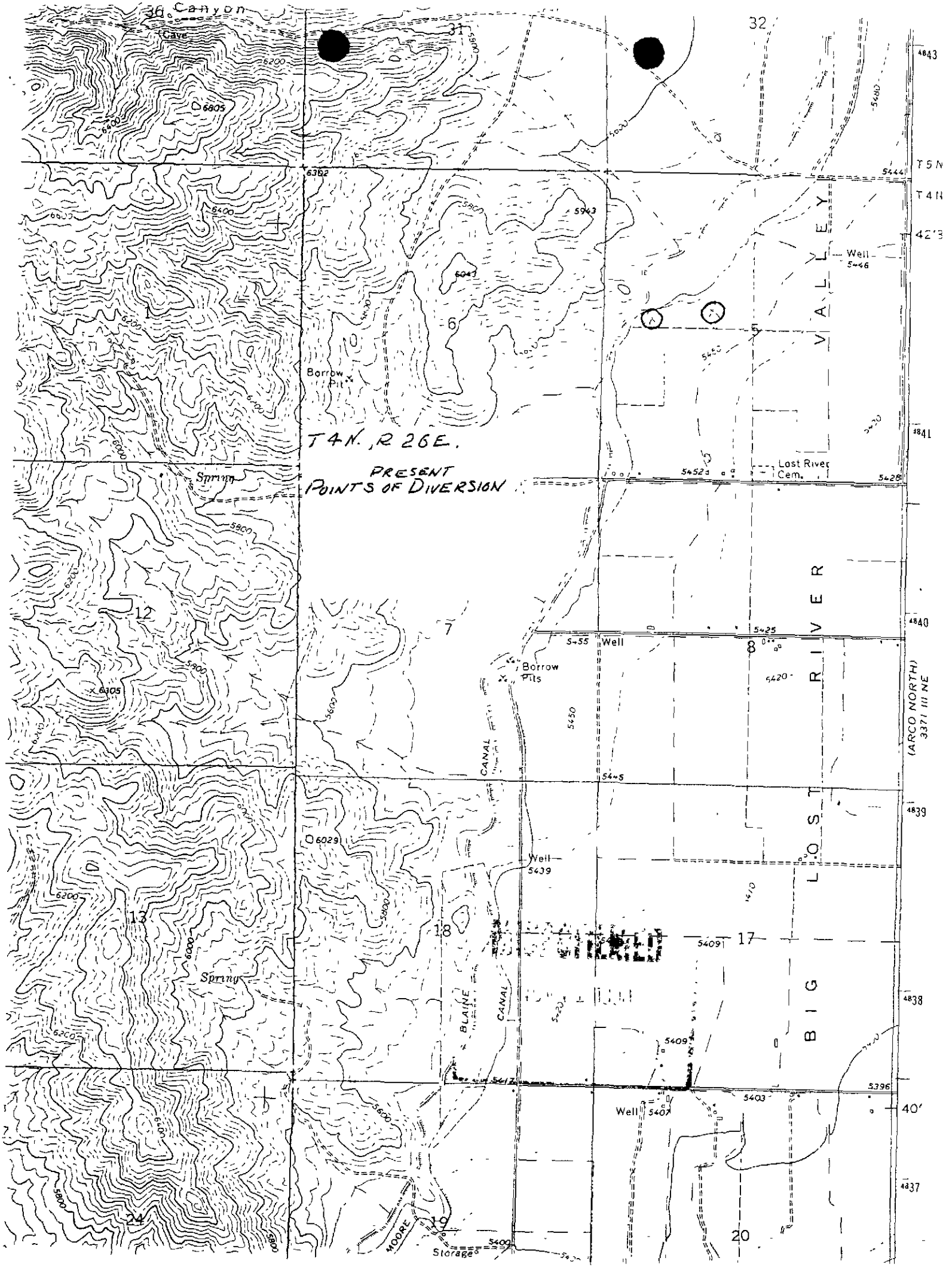


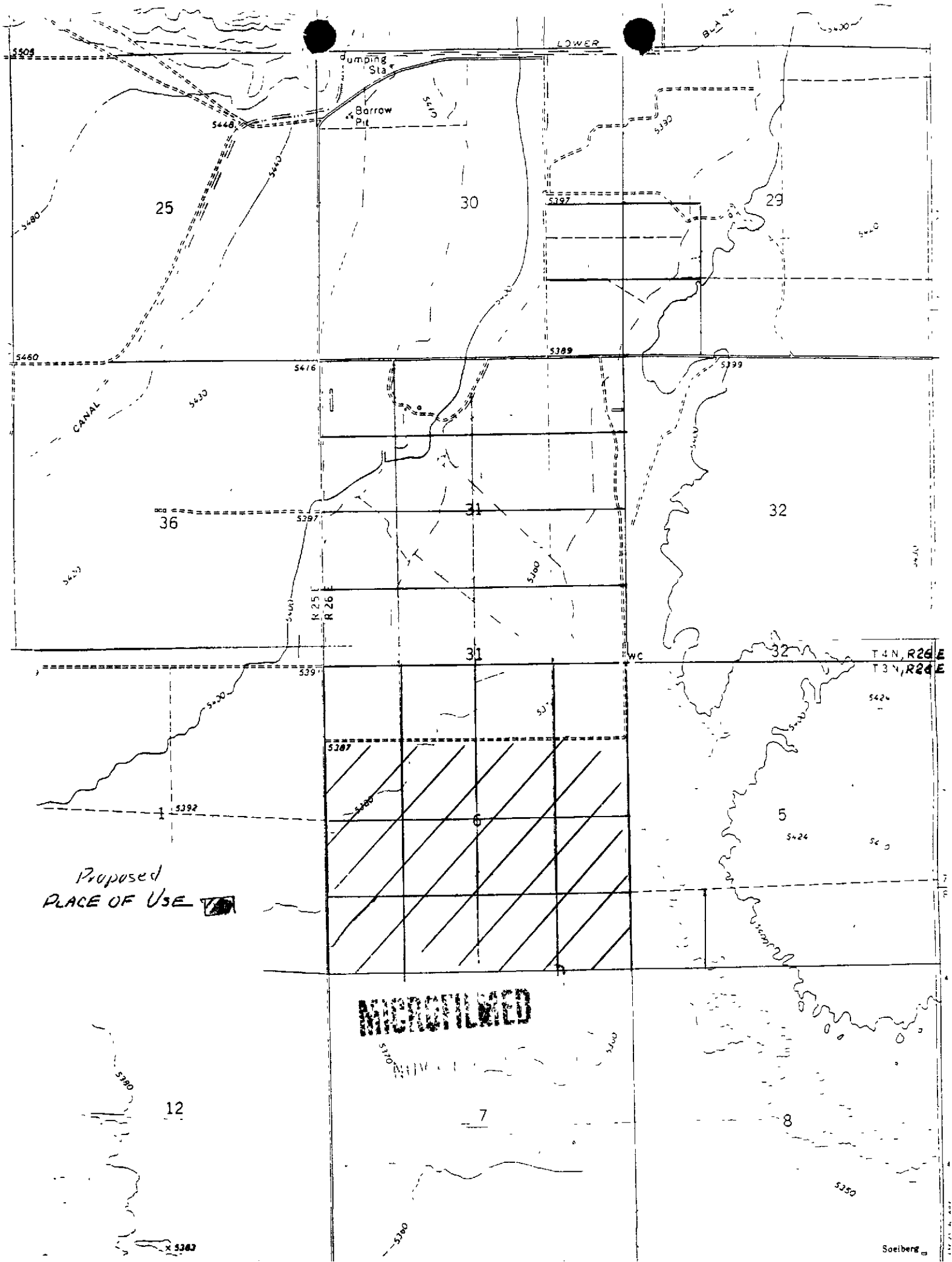
26 & ALT 93 INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1977 113°22'30" 670 000 FEET

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ROAD CLASSIFICATION

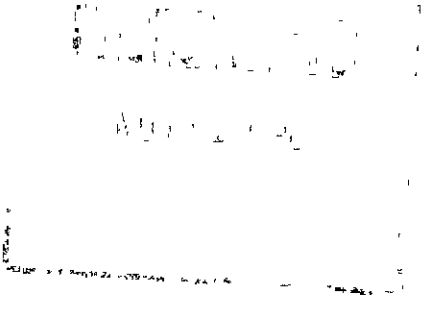
Mapped, edited, and published by the Geological Survey


Canyon
Cave
6805
6362
5943
Well
5446
Borrow Pit
T4N., R26E.
PRESENT
POINTS OF DIVERSION
Spring
Lost River Cem.
5452
5428
5420
5430
5455
Well
5425
Borrow Pits
6305
5450
CANAL
5445
6029
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5439
5409
5403
Well
5407
5396
BLAINE CANAL
MOORE
Storage
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LOST RIVER VALLEY
BIG
(ARCO NORTH)
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T4N
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LOWER
dumping Sta
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T 3 N, R 26 E
R 25 E
R 26 E
Proposed
PLACE OF USE
MICROFILMED
Soelberg

ATTACHMENT "A"

The three licenses, 34-7080A, 34-7136 and 34-7169, appear to show the two wells or points of diversion for these three rights in T.3N., R.25E., when, in fact, the wells are and always have been in T.4N., R.26E.



Form 42
3-87

Page 1 of 10

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5[illegible]

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant M. Todd Perkes, Juel Aikele & Michael Aikele Phone (208)523-0620

Post Office address %Holden, Kidwell, Hahn & Crapo, P.O. Box 50130, Idaho Falls, ID 83405

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
   ☐ Change nature of use ☐ Change period of use ☐ Other _____

2 Describe the reason for the proposed changes Present place of use of Perkes is in a set aside program; pending application for permit of Aikeles for proposed place of use is involved in a hopeless morass of litigation. This would provide a method for legal diversion of the Aikele well.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use		
34-7080A	09/23/1974	2.67	Irrigation	April 1	to	Nov. 1
34-7136	03/26/1976	5.50	Irrigation	April 1	to	Nov. 1
34-7169	01/06/1977	4.48	Irrigation	April 1	to	Nov. 1
					to	

2. Total amount of water being transferred 12.65 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge	County	Local name for diversion
		SW	SW	21	4N.	26E.	Butte	Aikele Well

5 Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	26E	6			40	40			40	40	40	40	40	40	40	40	40	40	480

Total acres 480

PART 1

6 General Information.

a. Description of diversion system Well and pump.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer.

This land is presently in a federal set aside program and is not being irrigated so there will be no effect for the duration of the lease agreement between Perkes and Aikeles.

d Remarks:

SEE ATTACHMENT "A"

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No 34-7080A/34-7136/34-7169

And said application is hereby APPROVED, subject to the following limitations and conditions:

PURSUANT TO MEMORANDUM DECISION AND ORDER APPROVING APPLICATION FOR TRANSFER NO. 3675 AND DENYING ATTORNEY'S FEES.

NOT FILMED
NOV 01 1990

Witness my hand this 22nd day of October, 19 90

L. Glen Saylor

CHIEF, WATER ALLOCATION BUREAU

Transfer No 5( )

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by

   a. Decree No. _____ Decreed to _____

   In case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. 34-7080A issued by the Idaho Department of Water Resources

   c Claim No _____ on file with the Idaho Department of Water Resources.

   d. Transfer No _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership Label document as attachment A Check appropriate box below

   ☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3 Source of water Groundwater tributary to _____

4. Date or priority September 23, 1974

5 Water is used for the following purpose

amount 2.67 cfs (cfs/ac-ft) for Irrigation purposes from April 1 to Nov. 1

amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

6 Total amount of water under right 2.67 cfs cubic feet per second and/or _____ acre-feet per annum
(But see condition in license.)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge.	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11	40	40	40	40													160

Total acres 160

9 Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No. _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No *If yes, describe* _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2 Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

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Total acres _____

Transfer No

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by

   a. Decree No. _____ Decreed to _____

   in case of _____ vs _____

   dated _____ in _____ county of _____

   b. License No 34-7136 issued by the Idaho Department of Water Resources.

   c Claim No. _____ on file with the Idaho Department of Water Resources

   d. Transfer No. _____ which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership Label document as attachment A Check appropriate box below

   ☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to _____

4. Date or priority March 26, 1976

5 Water is used for the following purpose.

   amount 5.5 cfs (cfs/ac-ft) for Irrigation purposes from April 1 to Nov. 1

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

6. Total amount of water under right 5.5 cfs cubic feet per second and/or _____ acre-feet per annum
   (But see condition in license.)

7 Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp	Rge.	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11					40	40	40	40									160

Total acres 160

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use.

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

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Total acres _____

Transfer No

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a Decree No. _____ Decreed to _____

   In case of _____ vs _____

   dated _____ in _____ county of _____

   b. License No. 34-7169 issued by the Idaho Department of Water Resources.

   c Claim No _____ on file with the Idaho Department of Water Resources

   d Transfer No _____ which produced this right

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A Check appropriate box below

   ☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3 Source of water Groundwater tributary to _____

4. Date or priority January 6, 1977

5. Water is used for the following purpose

   amount 4.48 cfs for Irrigation purposes from April 1 to Nov. 1
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)

6 Total amount of water under right 4.48 cfs cubic feet per second and/or _____ acre-feet per annum.
(But see condition in license.)

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
		SW	NW	5	3N	25E	Butte	
		SE	NW	5	3N	25E	Butte	

8 Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	11													40	40	40	40	160

Total acres 160

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No. _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C)

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2 Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

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Total acres _____

Transfer No. 36 [illegible]

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

SEE ATTACHED MAPS FOR CURRENT POINTS OF DIVERSION AND PLACE OF USE AND FOR PROPOSED NEW POINT OF DIVERSION AND PLACE OF USE.

SCALE: 2 inches equal 1 mile. Draw plan in ink

Transfer No 36 [illegible]

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

2. Quantity and quality of return flows and location of discharge.

3. Describe effects on other water uses resulting from the proposed change

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval

M Todd Parker [illegible]
(Signature of Applicant)

Subscribed and sworn to before me this 14 day of February, 19 90.

[illegible]
(Notary Public)

My commission expires 11/12/92

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by JW Date 2-14-90 Protest filed by Big Lost River Irrig.-

Prelim. check by _____ Fee $25.00 #EC12101 Petitions-

Receipted by HWJ Date 2-20-90

Published in Custer Publishing & Arco Advertiser Copies of protest forwarded by _____

Pub. dates 4-19 & 26-90 Hearing held by _____ Date _____

Watermaster recommendation requested on WD #34 Recommended for ☐ approval ☐ denial

_____ rec'd 5-1-90 by _____

Copy of transfer sent to lien holder _____

RECEIVED
NOV 01 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 3675 OF WATER RIGHT NOS. 34-7080A, 34-7136, and 34-7169 IN THE NAME OF M. TODD PERKES, JUEL AIKELE, and MICHAEL AIKELE.	PROPOSED ORDER DENYING MOTION FOR ATTORNEY'S FEES

This proceeding is an action before the Department of Water Resources (IDWR) to transfer the point of diversion and place of use of water right nos. 34-7080A, 34-7136 and 34-7169 in the name of M. Todd Perkes, Juel Aikele and Michael Aikele (applicants). The application for transfer was filed by the applicants and is being processed by IDWR pursuant to the provisions of I.C. § 42-222. The application was protested by the Big Lost River Irrigation District and by 138 persons signing a petition delivered to IDWR by Mr. Lawrence Babcock.

IDWR held a hearing on the protested application for transfer in Arco, Idaho on July 26, 1990. IDWR hearing officer Norman C. Young presided over the hearing. Attorney Kent W. Foster represented the applicants at the hearing. The protestant irrigation district was represented by Chairman Lewis Rothwell. Mr. Lawrence Bobcock acted as spokesman for the signers of the protest petition.

At the hearing, counsel for the applicants moved the hearing officer for an order requiring the protestants to pay the attorney's fees incurred by the applicants for representation at the hearing, alleging that the issues raised by the protestants were frivolous. The hearing officer took the motion for attorney's fees under advisement and

invited briefs to be filed by counsel for the parties. Counsel for protestant Lawrence Babcock filed a brief in opposition to the applicants' motion for attorney's fees on August 6, 1990. Counsel for the applicants subsequently filed a brief in support of the motion for attorney's fees.

In support of the motion, applicants assert that the protestants presented no evidence at the hearing to support any of the five grounds for protest and that the protestants had not even engaged in any investigative effort to obtain information in support of the allegations of the protest. The applicants conclude that the apparent reason for the protests is to harass, cause delay, and cause unnecessary expense to the applicants. The applicants consequently seek an award of attorney's fees before IDWR for being compelled to defend against the alleged unmeritorious and unsupported protests filed in this matter.

Applicants argue that the protests are frivolous and without foundation within the meaning of Rule 54(e)(1) of the Idaho Rules of Civil Procedure. Applicants state in their brief that they felt compelled to make a request for attorney's fees before IDWR so as not to be deemed to have waived a claim for attorney's fees in the proceeding before the agency if and when the case is reviewed by the district court on appeal.

Applicants further cite the case of Stewart v. Dept. of Health & Welfare, 115 Idaho 820, 771 P.2d 41 (1989) as authority for an administrative agency such as IDWR to award attorney's fees. The protestants in turn have cited the case of Idaho Power Company v. Idaho Public Utilities Commission, 102 Idaho 744, 639 P.2d 442 (1981) in support of their position that IDWR does not have the authority to award attorney's fees.

The Idaho Power case decided the issue of whether the Idaho Public Utilities Commission (IPUC) has the authority under state law to award attorney's fees in a

proceeding before the Commission in connection with the federal Public Utility Regulatory Policies Act of 1978 (PURPA). The Court began its analysis citing the general rule that an administrative agency such as the IPUC or IDWR "has no jurisdiction other than that which the legislature has specifically granted to it." 102 Idaho at 750. The Court also cited with approval a second general rule providing that "attorney fees cannot be recovered in an action unless authorized by statute or by express agreement of the parties." Id. Finding an absence of specific statutory authority for the IPUC to award attorney's fees in the proceeding before it, the Court held that the Commission lacked such authority. Id. at 751.

The applicants in their supporting brief have not cited any statutory authority empowering IDWR to award attorney's fees in a proceeding before it, and the agency is not aware of any such authority. The applicants rely solely upon the holding in Stewart v. Dept. of Health & Welfare, supra, to support their motion for an award of attorney's fees.

The Stewart case began as an action before the Idaho Personnel Commission brought by two employees of the Idaho State School and Hospital who were dismissed from their employment. The Personnel Commission ordered the employees reinstated and also ordered full back pay and the restoration of all employment benefits. In addition, the Commission stated in its order that the employees should be awarded attorney's fees in the action but that the Commission had no authority to make such an award.

The employees thereafter filed an appeal with the district court solely from the portion of the Commission's decision denying them costs and attorney's fees. The district court affirmed the Commission's decision, finding no statutory authority for the Commission to make an award of attorney's fees. The Supreme Court reversed, relying upon a broad construction of the language of I.C. § 12-117 which provides in pertinent part as follows:

> **12-117. Attorney fees, witness fees and expenses awarded in certain instances.--** (1) In any administrative or civil judicial proceeding involving as adverse parties a state agency and a person, the court shall award the person reasonable attorney's fees, witness fees and reasonable expenses, if the court finds in favor of the person and also finds that the state agency acted without a reasonable basis in fact or law.

The Stewart proceeding before the Personnel Commission came within the purview of section 12-117 because the administrative action involved as adverse parties a state agency, i.e., the Department of Health and Welfare, and the two employees discharged from the State School and Hospital. When these circumstances occur, the statute provides that "the court shall award the person reasonable attorney's fees . . . if the court finds in favor of the person and also finds that the state agency acted without a reasonable basis in fact or law."

In construing section 12-117, the three-justice majority was torn by the apparent anomaly presented by the statute which would allow a litigant who lost at the administrative level but won on appeal to be awarded attorney's fees by the court, whereas a litigant who won before the administrative tribunal would not be in a position to be awarded attorney's fees. The majority opinion, therefore, in effect interprets the word "court" in I.C. § 12-117 to mean "court or administrative agency."

Even applying the Stewart court's broad reading of I.C. § 12-117, IDWR is not authorized to award attorney's fees to the applicants in the present proceeding. The Stewart decision could at most authorize IDWR to award attorney's fees in a proceeding in which at least one of the adverse parties is a state agency and the Director determines that the state agency acted without a reasonable basis in fact or law. None of the protestants in the pending matter before IDWR is a state agency within the meaning of I.C. § 12-117.

IT IS, THEREFORE, HEREBY ORDERED that the applicant's motion for an award of attorney's fees before IDWR in this proceeding is denied.

DATED This 17TH day of September, 1990.

NORMAN C. YOUNG
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 18th day of September, 1990, true and correct copies of each of the foregoing PROPOSED ORDER DENYING MOTION FOR ATTORNEY'S FEES were mailed, postage prepaid to:

Marshall Todd Perkes
Route 1, Box 110
Arco, ID 83213

Gary Slette
Nelson, Rosholt, Robertson,
Tolman and Tucker
Box 1906
Twin Falls, ID 83303-1906

Lewis Rothwell, Chairman
Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

Juel and Michael Aikele
Route 1
Moore, ID 83255

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

Lawrence Babcock
Box 66
Moore, ID 83255

Jodi I. Schultz

JODI I. SCHULTZ
Secretary/Records Manager

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 3675 OF WATER RIGHTS 34-7080A, 34-7136, AND 34-7169	ORDER ISSUING PROPOSED MEMORANDUM DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Norman C. Young, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral agruments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.
CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.
FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 13th day of August, 19 90.

R. KEITH HIGGINSON
Director

MICROFILMED
NOV 01 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Transfer No. 3675 of Water Rights 34-7080A, 34-7136, and 34-7169 in the Names of M. TODD PERKES, JUEL AIKELE, and MICHAEL AIKELE and the Cease and Desist Order issued by the Department on June 22, 1990	PROPOSED MEMORANDUM DECISION AND ORDER

On February 14, 1990, M. Todd Perkes, Juel Aikele, and Michael Aikele ("Applicants") filed application for transfer No. 3675 to change the point of diversion and place of use of water right Nos. 34-7080A, 34-7136, and 34-7169. Approval of the application was protested by the Big Lost Irrigation District ("BLID") and by 138 persons signing a petition delivered to the Idaho Department of Water Resources ("Department") by Mr. Lawrence Babcock.

On June 22, 1990, the Department issued an order to Don A. Aikele, Juel Aikele, and Michael Aikele to cease and desist irrigation of land within the S1/2 of the SW1/4 of Section 6, T3N, R26E, BM until a right to do so is obtained or identified. Subsequent correspondence from Mr. Kent Foster, attorney for the Aikeles, indicated that the order would not be complied with and requested approval of application for transfer No. 3675 which, if approved, would authorize irrigation of the land that is the subject of the order to cease and desist. In response, the Department set a combined hearing to consider the application for transfer and the cease and desist order.

The hearing was held on July 26, 1990, in Arco, Idaho. The Applicants and recipients of the order to cease and desist were represented by Mr. Kent Foster. Protestant BLID was represented by Chairman Lewis Rothwell. Mr. Lawrence Babcock acted as spokesman for the protest petition signers. Other petition signers in attendance were given

the opportunity to ask questions and present testimony. At the hearing, Mr. Foster entered a motion seeking a ruling from the Department to require the protestants to pay attorney costs of the Applicants alleging that the issues raised by the protestants were frivolous and without merit. This issue was bifurcated from the other issues allowing a schedule to be entered for briefing the issue of payment of attorney costs, while allowing the record to be closed concerning the other issues of the hearing.

The hearing officer, having heard the testimony and having reviewed the exhibits, the hearing record and applicable law, proposes the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1) The rights proposed to be changed by application for transfer No. 3675 are recorded with the department as follows:

License No. 34-7080A authorizes the diversion of 2.67 cubic feet per second ("cfs") of ground water from wells located in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T3N, R25E for the irrigation of 160 acres located in the NE1/4 of Section 11, T3N, R25E. The priority date is September 23, 1974.

License No. 34-7136 authorizes the diversion of 5.50 cfs of ground water from the same wells listed for right No. 34-7080A for the irrigation of 160 acres in the NW1/4 of Section 11, T3N, R25E. The priority date is March 26, 1976.

License No. 34-7169 authorizes the diversion of 4.48 cfs of ground water from the same wells as the above listed two rights for the irrigation of 160 acres in the SE1/4 of Section 11, T3N, R25E. The priority date is January 6, 1977.

Each of the licenses is conditioned that when combined with the other two rights it "shall not provide more than 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of re-diversion located within the SE1/4NE1/4, Section 11, T3N, R25E." Each of the licenses also has the following condition:

> This right in no way grants any right-of-way or easement across the land of another.

Licenses 34-7136 and 34-7080A have the following condition:

This right shall not provide more than 0.02 cfs per acre for the lands identified above.

License 34-7169 is conditioned as follows:

This right shall not provide more than 2.68 cfs or 0.017 cfs per acre for the lands identified above.

2) Applicant Perkes testified that the actual location of the point of diversion for each of the licenses is in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E, and that the location has not been changed from that existing prior to issuance of the licenses. Licensing field examinations in the records of the department agree with the testimony.

3) Application for transfer No. 3675 proposes to change the location of the point of diversion of each of the licenses to the SW1/4SW1/4, Section 21, T4N, R26E, a location approximately 3 miles south and 1 mile east of the present actual point of diversion. The application proposes to divert 12.65 cfs for the irrigation of 480 acres in the S1/2N1/2, S1/2, Section 6, T3N, R26E. The new place of use is approximately 1/2 mile north and 1 and 1/2 mile east of the present place of use for the licenses.

4) Notice of application for transfer No. 3675 was advertised in the Arco Advertiser and the Challis Messenger on April 19 and 26, 1990. The protests of BLID and the signed petition were timely received prior to the protest date of May 7, 1990.

5) The following issues were raised concerning application for transfer No. 3675:

-Whether other rights will be injured by the change.

-Whether the change will result in an enlargement in use of the rights.

-Whether the change is in the local public interest.

-Whether the change is consistent with the conservation of water resources in the state of Idaho.

-Whether the rights sought to be changed have been confirmed by license and can be changed under Section 42-222, Idaho Code.

6) The following issues were raised concerning the cease and desist order:

-Has the S1/2SW1/4, Section 6, T3N, R26E been irrigated this season without a valid water right?

-Have the Aikele's continued to irrigate the S1/2SW1/4, Section 6, T3N, R26E after service of the order to cease and desist?

-Should the Department seek enforcement of the order to cease and desist?

-Is the proper forum for considering the order the district court?

7) The hearing officer included in the hearing record a letter submitted by David A. Flesher, Acting County Supervisor of Farmers Home Administration, USDA, indicating FmHA holds a lien on the water rights of transfer No. 3675. Mr. Flesher indicates that transfer of the rights from the mortgaged property would be a violation of the loan and security agreement, and he asks that the processing of the transfer be suspended until concurrence of FmHA is received.

8) Applicant Perkes testified that the water rights proposed to be changed by application for transfer No. 3675 were used until two years ago when the lands were placed in a year-to-year federal set-aside program.

9) Applicant Perkes testified that he owns the water rights to be changed by transfer No. 3675 and the land to which these rights are appurtenant. The Applicants testified that they had entered into an agreement allowing the Aikeles to use the water rights as proposed in transfer No. 3675 on an annual basis with the right to continue on a year-to-year basis.

10) The well to which the rights would be transferred has been used for 8 to 10 years. Juel Aikele testified that less than 12.65 cfs can be diverted from the well as presently constructed.

11) The Big Lost River Basin is in a fourth consecutive season with much below average rain and snowfall. As a result, ground water levels have declined throughout the basin and streamflows have decreased. Information is not currently available to determine the extent to which the operation of specific wells has had an effect upon the streamflow

and upon ground water levels.

12) Approval of the application for transfer will not increase the rate or volume of ground water diverted nor increase the acreage irrigated under existing rights.

13) The S1/2SW1/4, Section 6, T3N, R26E, has been irrigated this season without a valid water right and irrigation has continued following service of the order to cease and desist.

14) One or both of the wells from which the water rights are sought to be transferred have been pumped this season for use on land for which the wells are not an authorized point of diversion.

CONCLUSION OF LAW

1) Section 42-222, Idaho Code, provides, in part, that:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area."

2) Approval of application for transfer No. 3675 with appropriate conditions will not result in injury to other rights.

3) Approval of application for transfer No. 3675 with appropriate conditions will prevent an enlargement of the original rights.

4) Approval of application for transfer No. 3675 is in the local public interest and is consistent with the conservation of water in the state of Idaho.

5) Water has been used on the S1/2SW1/4, Section 6, T3N, R26E, without having a valid water right, and the irrigation of this parcel has continued after receipt of an order issued by the Director pursuant to Section 42-351, Idaho Code, to cease and desist.

6) Section 42-351(1), Idaho Code, provides that:

> If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water course or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may file an action seeking injunctive relief or may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's action into compliance with applicable law and with any existing water right.

7) Section 42-352(1), Idaho Code provides that:

> Any person who willfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty to be imposed by the director of water resources not to exceed one hundred dollars ($100) per diversion for each calendar day, or any part of a calendar day, following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to recover said civil penalties.

8) The issue of whether a transfer of the subject water rights constitutes a violation of the loan and security agreement covering the land from which the rights are being transferred is beyond the authority of the Department to determine. Testimony indicates that the lease of the water rights associated with transfer application No. 3675 is on a year-to-year basis. In the event that the FmHA foreclosed on the mortgage, the Department understands that the water rights, although transferred, would remain part of the property subject to the mortgage.

9) Because of the year-to-year lease of water, the transfer must be conditioned to authorize the change in place of use and point of diversion for a similar period.

ORDER

It is therefore ordered that application for transfer No. 3675 be approved and the same is hereby approved, subject to the following conditions and requirements:

1) Approval is effective until November 1, 1990, unless extended by the director. Upon expiration of this approval or any extension thereof, the place of use and point of diversion for water right Nos. 34-7080A, 34-7136 and 34-7169 shall revert to that existing prior to the approval.

2) During the period of this transfer approval or any extension thereof, the use of water on the lands originally licensed and the diversion of water from the original points of diversion under water right Nos. 34-7080A, 34-7136 and 34-7169 is prohibited.

3) Prior to diverting water under this approval, a measuring device shall be installed and maintained in good working condition as determined by the Department at the point of injection into the canal and another shall be installed and maintained at the point of re-diversion from the canal to the lands to be irrigated. The measuring devices shall be of a type acceptable to the director of the Department.

4) This approval does not constitute an easement or right-of-way across the lands of another; nor does it authorize the use of any canal, ditch, well or pipeline owned by another.

5) The rate of diversion from the well located in the SW1/4SW1/4, Section 21, T4N, R26E shall not exceed 12.43 cfs and the rate of re-diversion from the canal to the lands irrigated under this approval shall not exceed 8.49 cfs.

6) The rate of diversion under this approval shall not provide more than 0.02 cfs per acre at the field headgate for the lands actually being irrigated pursuant to this approval when combined with all other rights used on the same land.

7) This approval does not authorize the construction, reconstruction, or modification of any well.

8) The wells in the SW1/4NW1/4, SE1/4NW1/4, Section 5, T4N, R26E from which the rights to the diversion of water are transferred shall be rendered inoperable. The

FILED

means used by the applicants to render the wells inoperable shall be a method acceptable to the director of the Department. Thereafter, the wells shall not be made operable again until the director acknowledges in writing that a valid right exists to divert water from the wells.

9) Applicants Juel Aikele and Michael Aikele shall pay into the enforcement fund of the Department a penalty of $100 per day for each day that the well in the SW1/4SW1/4 Section 21, T4N, R26E was operated after receipt of the cease and desist order and prior to the date of the hearing on July 26, 1990. Unless the applicants provide documentation to show otherwise the penalty will be based upon continuous pumping during the period. This transfer approval shall become void unless the penalty due is paid to the Department by August 31, 1990.

10) The director retains jurisdiction of this matter to extend the expiration date of this approval upon written notice that the lease has been extended; and upon expiration of the approval to order that the rights revert to the points of diversion and places of use existing prior to the approval of transfer No. 3675.

11) Approval of this transfer does not constitute the approval of the FmHA or other entity holding a lien or mortgage on the water rights involved.

12) Violation of the conditions of this approval shall be cause for the director to void this approval.

DATED this 9TH day of August, 1990.

Norman C Young

NORMAN C. YOUNG
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this the 13th day of August, 1990, true and correct copies of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER, were mailed, postage prepaid to:

Marshall Todd Perkes
Route 1, Box 110
Arco, ID 83213

Juel and Michael Aikele
Route 1
Moore, ID 83255

Gary Slette
Nelson, Rosholt, Robertson,
Tolman and Tucker
Box 1906
Twin Falls, ID 83303-1906

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

Lewis Rothwell, Chairman
Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

Lawrence Babcock
Box 66
Moore, ID 83255

Rita I. Fleck

RITA I. FLECK
Secretary/Records Manager

AFFIDAVIT OF PUBLICATION

I, Colleen Babcock Dep... Water Resources
Eastern District Office
of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with the issue dated April 19, 1990

and ending with the issue dated April 26, 1990

Colleen Babcock

STATE OF IDAHO }
COUNTY OF BUTTE }

On this 27 day of April

in the year of 1990, before me, a Notary Public,

personally appeared

Colleen Babcock

known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same

Thomas D. Cannon

Notary Public for Idaho

Residing at Arco, Id.

My commission expires 12-17-91

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

Notice is hereby given that M. TODD PERKES, JUEL & MICHAEL AIKELE have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. The right sought to be changed is evidenced by LICENSE NO.'S 34-7080A, 34-7136, & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW SENW S 5 T 3N R 25E, BUTTE COUNTY
NO. 34-7080A
AMOUNT: 2.67 CFS
PRIORITY: SEPT. 23, 1974
The water is used to irrigate 160 acres from April 1 to November 1 within the NE¼ S 11 T 3N R 25E, B.M.
NO. 34-7136
AMOUNT: 5.5 CFS
PRIORITY: MARCH 26, 1976
The water is used to irrigate 160 acres from April 1 to November 1 within the NW¼ S 11 T 3N R 25E, B.M.
NO. 34-7169
AMOUNT: 4.48 CFS
PRIORITY: JAN. 6, 1977
The water is used to irrigate 160 acres from April 1 to November 1 within the SE¼ S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the S½N½ S½ S 6 T 3N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson
Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Margaret Parks, Publisher of the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated April 19 19 90 and ending with the issue dated April 26 19 90

Margaret Parks

STATE OF IDAHO)
)
COUNTY OF CUSTER)

On this 27 day of April in the year of 90, before me, a Notary Public, personally appeared Margaret Parks, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Mae Kapp
Notary Public for Idaho
Residing at Challis
My commission expires: 11/7/92

APR 30 1990

Department of Water Resources
Eastern District Office

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT NO. 34-7080A/34-7136/34-7169

Notice is hereby given that M. TODD PERKES, JUEL & MICHAEL AIKELE have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. The right sought to be changed is evidenced by LICENSE NO.'S 34-7080A, 34-7136, & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW SENW S 5 T 3N R 25E, BUTTE COUNTY

NO. 34-7080A AMOUNT. 2.67 CFS PRIORITY: SEPT. 23, 1974

The water is used to irrigate 160 acres from April 1 to November 1 within the NW1/4 S 11 T 3N R 25E, B.M.

NO. 34-7136 AMOUNT: 5.5 CFS PRIORITY: MARCH 26, 1976

The water is used to irrigate 160 acres from April 1 to November 1 within the NW1/4 S 11 T 3N R 25E, B.M.

NO. 34-7169 AMOUNT: 4.48 CFS PRIORITY: JAN. 6, 1977

The water is used to irrigate 160 acres from April 1 to November 1 within the SE1/4 S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the S1/2N1/2 S1/2 S 6 T 3N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before MAY 7, 1990.

R. Keith Higginson, Director

Pub: April 19 & 26, 1990.

State of Idaho

Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 34-7080 B Priority September 23, 1974 Amount 5.33 cfs

THIS IS TO CERTIFY, that John E. McAffee

of Arco, Idaho, has complied with the terms and conditions of Permit No. 34-7080 B issued pursuant to Application for Permit dated September 23, 1974, and has submitted proof to the Department of Water Resources on February 13, 1979, that he has applied water to a beneficial use, an examination by the Department indicates that the works have a capacity for the diversion of 5.79 cfs of water from a groundwater source, tributary to _____, and that the permit holder has applied to a beneficial use and established a right to use water as follows.

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	from April 1 to November 1	at 5.33 cfs and	858.0 acre feet
_____	from _____ to _____	at _____ cfs and	_____
_____	from _____ to _____	at _____ cfs and	_____

(both dates inclusive)

Subject, however, to the condition that no more than 5.33 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed 858.0 acre feet per year, said waters to be diverted within the SW¼NE¼, Section 32, Twp. 5N, Rge. 26E in the County of Butte

Description and location of place of use:

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	25E	12					40	40	40	40	31	32	31	32					286

Total number of acres irrigated 286

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, **Idaho Code**, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, and is subject to all prior water rights, as provided by the laws of Idaho.

In witness the seal and signature of the Director, affixed at Boise, Idaho, this 4th day of April, 19 83

Director

Form 211
2/80

Ident. No 34-7080 B

STATE OF IDAHO

Amended

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use.

Comes now John E. McAffee Phone

of (address) ~~Darlington, ID 83231~~ Rt. 1 Box 26 Arco, ID, and represents to the Director of the Idaho Department of Water Resources.

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 34-7080 B, and requests that the permit and permit map be changed as follows:

1. Point of diversion: SW ¼ NE ¼, Section 32, Township 5N, Range 26E, B.M., County of Butte Other points of diversion.

2. Period and nature of use (irrigation, domestic, stockwatering, industrial, etc.)

Amount 5.33 (cfs or ~~acre feet per annum~~) for irrigation purposes from 4/1 to 11/1 (both dates inclusive)

Amount _____ (cfs or acre feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

Amount _____ (cfs or acre feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

Amount _____ (cfs or acre feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

3. Place of use or land to be irrigated:

TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	25E	12					40	40	40	40	31	32	31	32					286

Total number of acres to be irrigated = 286

4. a. Who owns the property at the point of diversion? BLM Lease

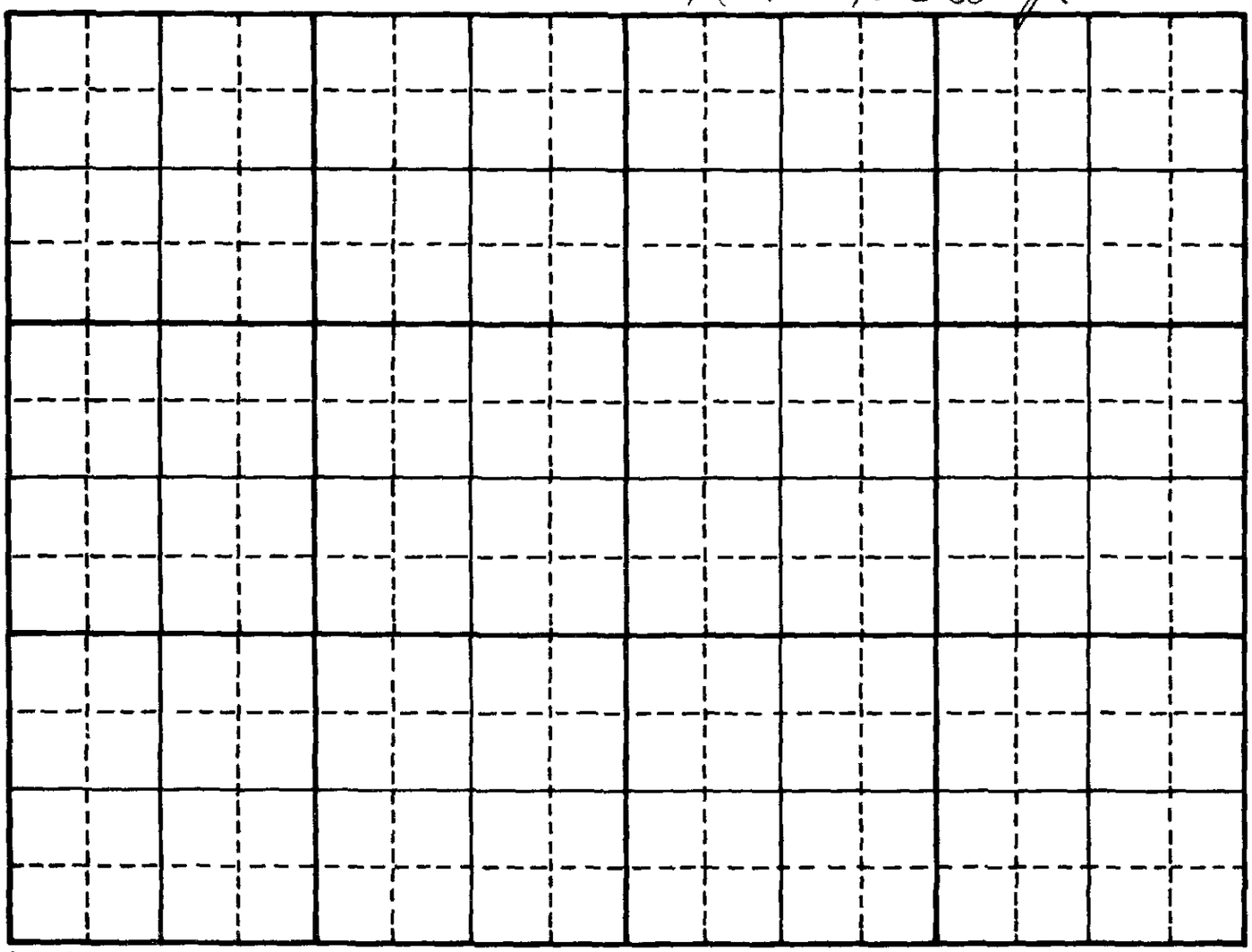
b. Who owns the land to be irrigated or the place of use? Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

MICROFILMED

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches. Not Necessary



Scale: 2 inches equal 1 mile

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Idaho Falls, this 25 day of Jan., 1983.

John McCoffee
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by RC Fee = $20.00 Receipted by BP Date 1/25/83 H23341

Publication prepared by N/A Date _____ Published in _____

Publication dates _____

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, of the Department of Water Resources hereby

APPROVE the above Application for Amendment of Permit No. 34-7080 B.

MICROFILMED

Witness my hand this 4th day of April, 1983.

A. Kenneth Dunn
Director

State of Idaho

Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 34-7080A Priority September 23, 1974 Amount 2.67 cfs

THIS IS TO CERTIFY, that Marshal Todd Perkes

of Arco, Idaho , has complied with the terms and conditions of Permit No. 34-7080A issued pursuant to Application for Permit dated September 23, 1974, and has submitted proof to the Department of Water Resources on February 13, 1979, that he has applied water to a beneficial use, an examination by the Department indicates that the works have a capacity for the diversion of 12.43 cfs of water from a groundwater source, tributary to _____, and that the permit holder has applied to a beneficial use and established a right to use water as follows:

Beneficial Use	Period of Use		Rate of Diversion		Annual Volume
Irrigation	from April 1	to November 1	at 2.67	cfs and	480.0 acre feet
_____	from _____	to _____	at _____	cfs and	_____
_____	from _____	to _____	at _____	cfs and	_____

(both dates inclusive)

Subject, however, to the condition that no more than 2.67 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed 480.0 acre feet per year, said waters to be diverted within the SW¼NW¼, SE¼NW¼, Section 5, Twp. 3N, Rge. 25E in the County of Butte.

Description and location of place of use

Twp	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	25E	11	40	40	40	40													160

Total number of acres irrigated 160

This right when combined with Rights 34-7136 and 34-7169 shall not provide more than 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of rediversion located within the SE¼NE¼, Section 11, Twp. 3N, Rge. 25E.
This right in no way grants any right-of-way or easement across the land of another.
This right shall not provide more than 0.02 cfs per acre for the lands identified above.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 27th day of September, 19 82.

Norman C Young

Acting for the Director

Form 211
2/80

Ident. No. 34-7080 A

STATE OF IDAHO

LICENSING

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use.

Comes now Marshal Todd Perkes Phone

of (address) Route #1, Box 110, Arco, Idaho 83213 , and represents to the Director of the Idaho Department of Water Resources.

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 34-7080 A , and requests that the permit and permit map be changed as follows.

1. Point of diversion: SW ¼ NW ¼, Section 5 , Township 3N , Range 25E , B.M , County of Butte . Other points of diversion

SE¼NW¼, Sec. 5, Twp. 3N, Rge. 25E

2. Period and nature of use (irrigation, domestic, stockwatering, industrial, etc.)

Amount 2.67 for irrigation purposes from 4/1 to 11/1 (both dates inclusive)
(cfs ~~or acre feet per annum~~)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

NO CHANGE

TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated = _____

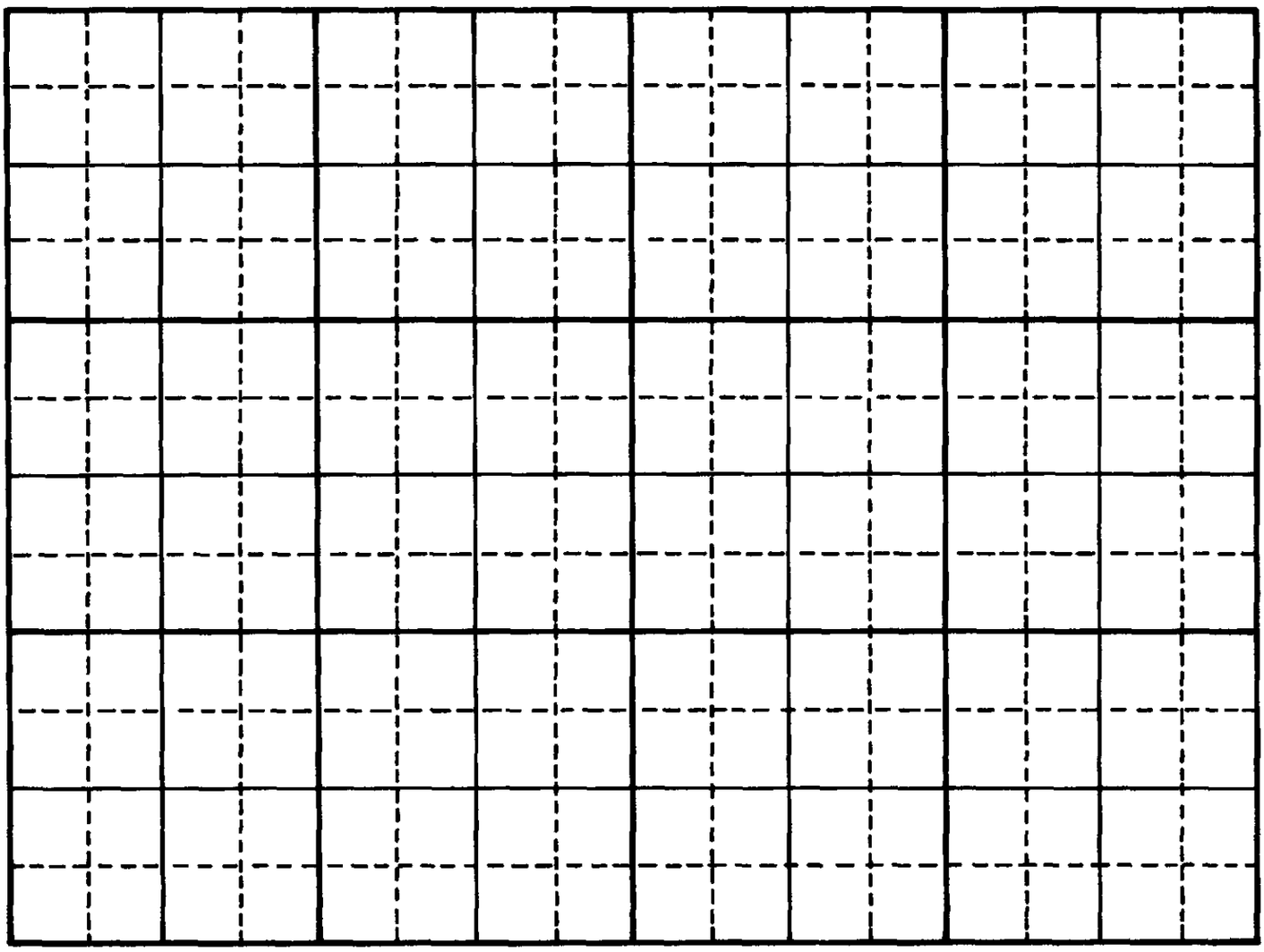
4. a. Who owns the property at the point of diversion? _____

b. Who owns the land to be irrigated or the place of use? _____

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches. NOT NECESSARY



Scale: 2 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Arco Idaho, this 15 day of August, 1982.

Marshal Todd Parker
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by [illegible] Fee = $20.00 Receipted by [illegible] Date 8 16 82 #146-14

Publication prepared by N/A Date _____ Published in _____

Publication dates _____

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, of the Department of Water Resources hereby APPROVE the above Application for Amendment of Permit No. 34-7080A.

Witness my hand this 27TH day of September, 19 82.

Norman C Young
Acting for the Director

Filing Fee: $10.00
Receipt # 15745

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
APR 8 1976
Department of Water Resources
Eastern District Office

APPLICATION FOR AMENDMENT

Permit No. 34-7080 (Part) B

Comes now John E. McAffee of (address) Darlington, Idaho, and represents to the Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 34-7080, and requests that the permit and permit map be changed as follows:

1. Point of diversion: SW ¼ NE ¼, Sec. 32 Twp. 5N Rge. 26E, B.M., County of Butte. Other points of diversion: NW¼SE¼, Sec. 32, T. 5N, R. 26E, B.M.

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)
NO CHANGE

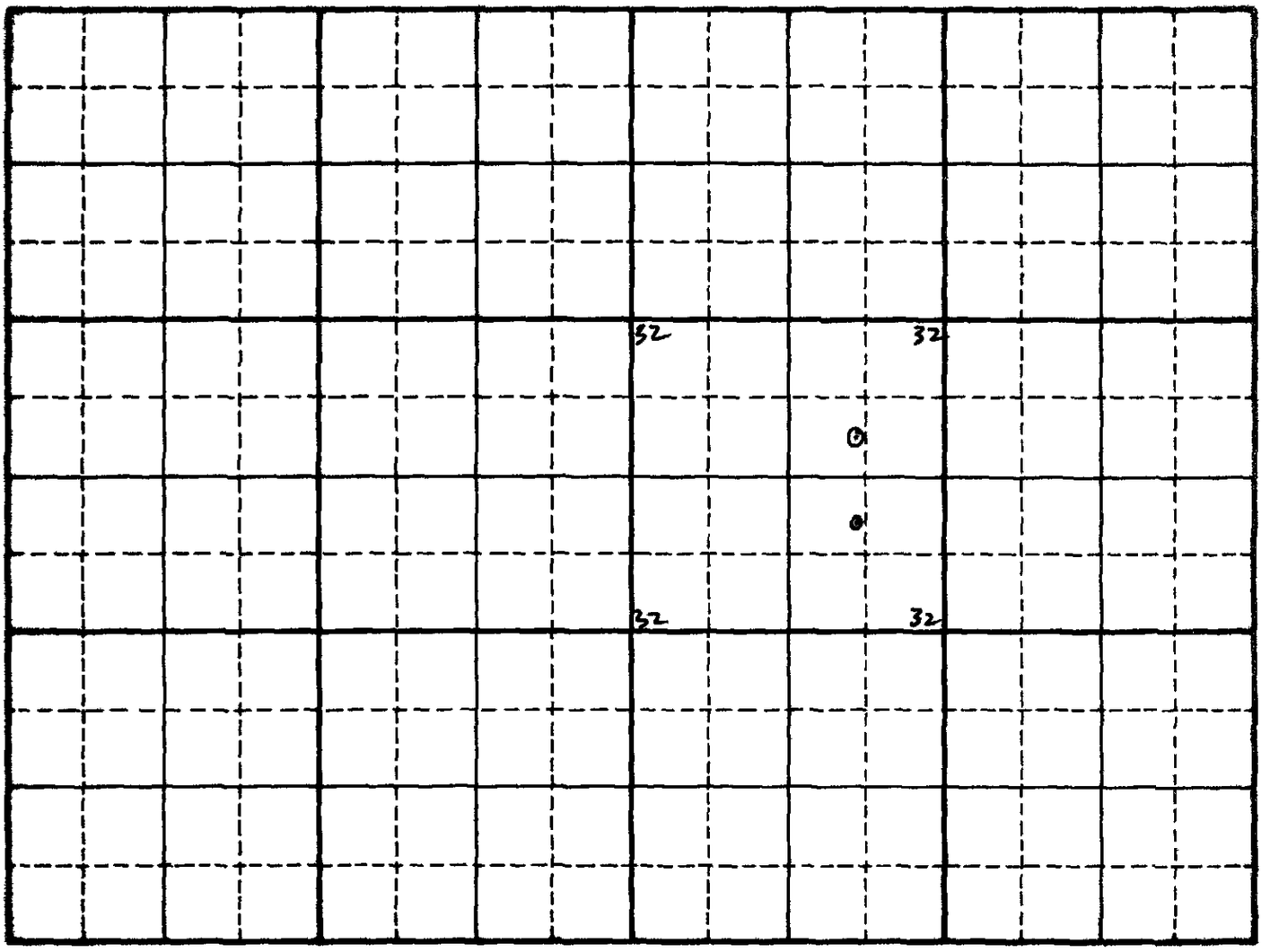
Amount 5.33 for Irrigation purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:
NO CHANGE

TWP	RANGE	SEC	NE ¼				NW ¼				SW ¼				SE ¼				TOTALS
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	12	40	40	40	40	40	40	40	40									320

Total number of acres to be irrigated 320

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

That no one will be injured by such change, and that such change will be made at permit holders own risk.

Signed at Idaho Falls, this 8 day of April, 19 76.

(signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Administrator, Operations Division ~~Director~~ of the Department of Water Resources

hereby APPROVE the above application for amendment for Permit No. 34-7080(part).

Witness my hand this 24 day of November, 19 76.

~~Director~~

Administrator, Operations Division

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protest(s) Against Approval of Application for Permit No. 34-7121, 34-7119, 34-7080 (A) in the name of MCAFEE, COBURN, SOELBERG	WITHDRAWAL OF PROTEST(S)

Based upon the information presented at the conference held on APRIL 8, I/we agree that the granting of Permit No. 34-7121 AMENDMENT 34-7080, 34-7119, 34-7118 does not appear to be a threat to my/~~our~~ ~~prior~~ water rights and I/~~we~~ hereby withdraw my/~~our~~ protest(s) against the approval of this application.

Signed at ARCO, this 8th day of APRIL, 1974.

Grant Daniels

January 26, 1976

Department of Water Resources
1515 Lincoln Road
Idaho FAlls, Idaho 83401

Dear Mr. Carlson:

I have a permit (No. 34-7092) for 12.0 c.f.s. The system is in and we pumped 5,000 GPM last irrigation season. Jewell and Herman Aikele have a well within 700 feet of our well and are pumping 5,000 GPM. Rodney Pearson has a well that has just been drilled within 300 feet of our well. This well has not yet been pumped. We object to John McAffee drilling a well within the SE¼SW¼, Sec. 32, T. 5N, R. 26E, B.M.

It is not reasonable to expect the ground-water system to supply adequate water for this many big wells located that close together.

Very truly yours,

GRANT DANIELS
Darlington, Idaho

Filing Fee: $10.00
Receipt # 15563

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR AMENDMENT

REPLACED BY AMENDMENT FILED APRIL 8, 1976.

Permit No. 34-7080 (Part)

Comes now John E. McAffee of (address) Darlington, Idaho 83231, and represents to the Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 34-7080 Part, and requests that the permit and permit map be changed as follows:

1. Point of diversion: SE ¼ SW ¼, Sec. 32 Twp. 5N Rge. 26E, B.M., County of Butte. Other points of diversion:

SW¼NE¼, Sec. 32, T. 5N, R. 26E

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

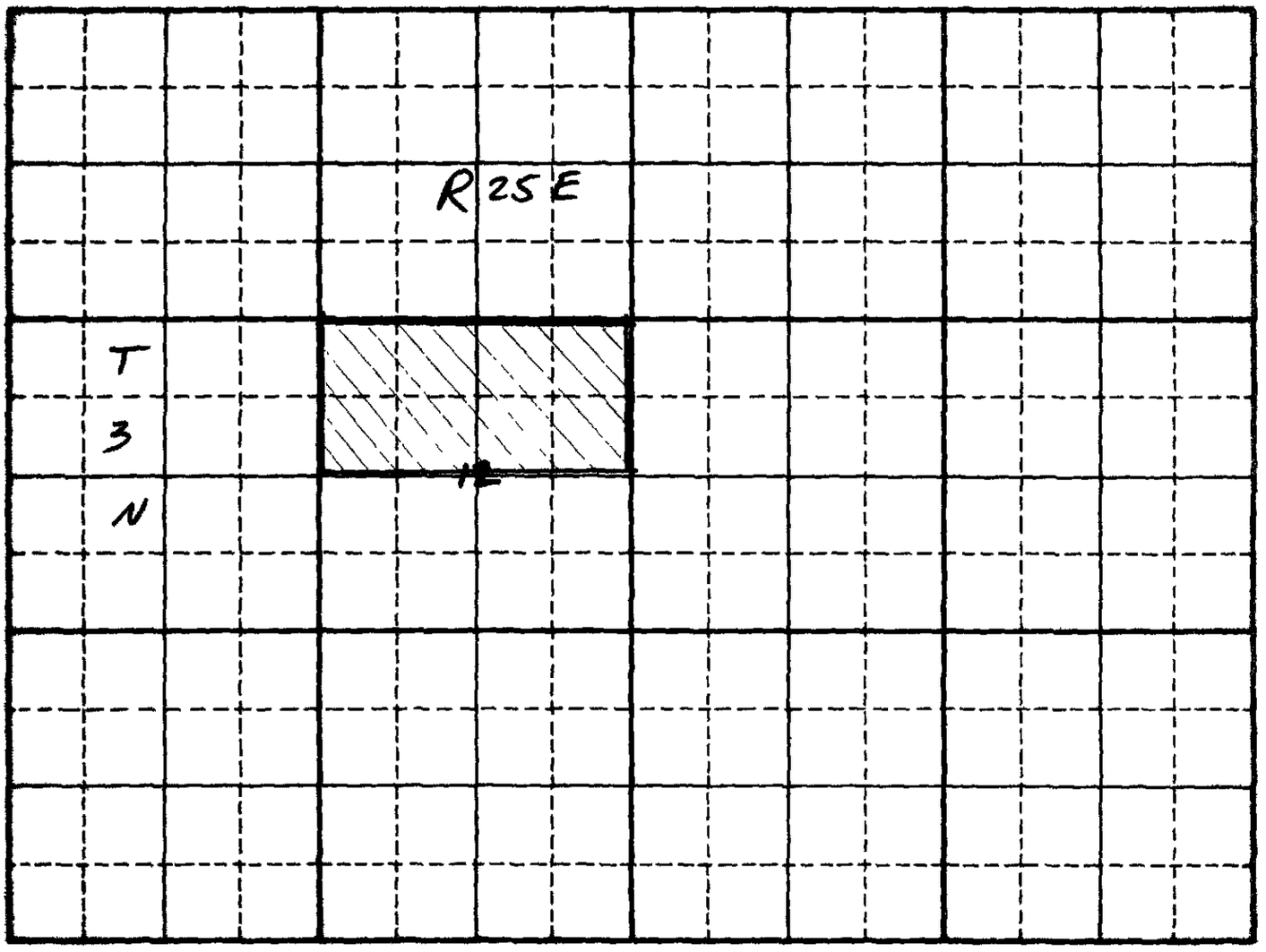
Amount 5.33 for Irrig. purposes from Apr. 1 to Nov. 1 (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

TWP	RANGE	SEC	NE ¼				NW ¼				SW ¼				SE ¼				TOTALS
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	12	40	40	40	40	40	40	40	40									320

Total number of acres to be irrigated 320

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

That no one will be injured by such change, and that such change will be made at permit holders own risk.

Signed at Idaho Falls, this 9 day of Jan, 19 76.

John E Moffett
(signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, _____, Director of the Department of Water Resources

hereby _____

REPLACED BY AMENDMENT FILED APRIL 8, 1976.

Witness my hand this _____ day of _____, 19 _____.

REPLACED BY AMENDMENT FILED APRIL 8, 1976.
Director

State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

I, Thomas Perkes, hereby assign to Marshal Todd Perkes

of Arco, Idaho 83213 (Rt. #1, Box 113-B)
Address

CHECK ONE

☐ All my right, title, and interest in and to Permit No. _____ to appropriate the public waters of the State of Idaho.

☒ The following described portion of my right, title, and interest in and to Permit No. 34-7080 Part to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within each 40 acre subdivision, the point of diversion and the amount of water in cubic feet per second for direct diversion, or acre feet for storage)

1/3 or 2.67 c.f.s. and the NE¼, Sec. 11, T. 3N, R. 25E,
Butte County consisting of 160 acres.

Made this 16th day of JANUARY, 1976.

Thomas Perkes
Permit Holder

Spouse of Permit Holder

State of Idaho)
ss.
County of Bonneville)

On this 16th day of JANUARY, 1976, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Notary Public residing at
IDAHO FALLS, IDAHO

seal

My commission expires:
2/19/78

State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

I, Thomas Perkes, hereby assign to John E. McAffee

of Darlington, Idaho 83231
Address

CHECK ONE

☐ All my right, title, and interest in and to Permit No. _____ to appropriate the public waters of the State of Idaho.

☒ The following described portion of my right, title, and interest in and to Permit No. 34-7080 Part to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within each 40 acre subdivision, the point of diversion and the amount of water in cubic feet per second for direct diversion, or acre feet for storage)

2/3 or 5.33 c.f.s. and the N½, Sec. 12, T. 3N, R. 25E, B.M.
Butte County; consisting of 320 acres.

Made this 16th day of JANUARY, 1976.

Thomas Perkes
Permit Holder

Spouse of Permit Holder

State of Idaho)
ss.
County of BONNEVILLE)

On this 16th day of JANUARY, 1976, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

seal

Notary Public residing at
IDAHO FALLS IDAHO

My commission expires:
2/14/78

Affidavit of Publication

I, [illegible], of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with the issue dated 1-22-76

and ending with the issue dated 2-5-76

[illegible]

Subscribed and sworn to before me this 25 day of [illegible], 19 76

[illegible]
Notary Public

Residence: Arco, Idaho.
My commission expires [illegible], 19 [illegible].

PUBLIC NOTICE

NOTICE OF PROPOSED AMENDING OF WATER RIGHT

Notice is hereby given that Permit No. 34-7080 (Part) was assigned to John E. McAffee, issuing the diversion of 5.33 c.f.s. of water from a ground water source with the point of diversion in the NW¼NE¼, Sec 5, T. 4N, R. 28E, B.M., Butte County; to be used from Apr. 1 to Nov. 1 for the irrigation of 320 acres within the N½, Sec 12, T. 3N, R. 25E, B.M.

The permit holder now proposes to amend Permit No. 34-7080 (Part), changing the points of diversion to the SE¼SW¼, SW¼NE¼, Sec. 32, T. 5N, R. 28E, B.M.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before February 16, 1976.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho, on January 29 and February 5, 1976.

Affidavit of Publication

I, LaElla Commack, of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with the issue dated 4/22/76

and ending with the issue dated 4/29/76.

LaElla Commack

Subscribed and sworn to before me this 8 day of May, 1976

Notary Public

Residence: Arco, Idaho.
My commission expires 3/14, 1978.

RECEIVED
MAY 11 1976
Department of Reclamation
Eastern District Office

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No 34-7080 (Part), in the name of John McAffee was amended January 16, 1976 by changing the points of diversion to the SE¼SW¼, SW¼NE¼, Sec. 32, T 5N, R 26E, B.M., Butte County.

The permit holder is now amending the amended Permit No. 34-7080 changing the points of diversion to the SW¼NE¼, NW¼SE¼, Sec 32, T. 5N, R. 26E, B M

Any protest to the proposed amending of the amended permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before May 10, 1976

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho, on April 22 and April 29, 1976

PARTIAL ASSIGNMENTS ONLY

ASSIGNED TO: JOHN E. McAFFEE
1-16-1976 Darlington, ID 83231
5.33 c.f.s., N½, Sec. 12, T3N, R25E, BUTTE,CO. 320 Acres

ASSIGNED TO: MARSHAL TODD PERKES
1-16-1976 RT. 1, Box 113-B
Arco, ID 83213
2.67 c.f.s., NE¼, Sec. 11,
T. 3N, R. 25E, Butte Co.
160 Acres

Identification No 34 7080

Application No _____

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

1 Name of applicant Thomas Perkes

post office address Moore, Idaho PH: 527-3316

2 Source of water supply ground water which is a tributary of - - - - -

3 a. Location of point of diversion is NW ¼ of NE ¼ of Section 5 Township 4N Range 26E B.M Butte County; additional points of diversion if any: _____

b If water is not consumed, it will be discharged into _____ at a point in _____ ¼ of _____ ¼ of Section _____ Township _____ Range _____ B M _____

4 Water will be used for the following purposes

Amount 8.0 (cfs or ~~acre feet per annum~~) for Irrigation purpose from Apr. 1 to Nov. 1 (both dates inclusive)

Amount _____ (cfs or acre feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)

Amount _____ (cfs or acre feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated

a 8.0 cubic feet per second and, or

b _____ acre feet per annum

6 Proposed diverting works

a Description of ditches, flumes, pumps, headgates, etc Deep well, pump directly into Moore Canal. Transport through existing Big Lost Irrigation District distribution system, apply with circular wheel move sprinklers.

b Height of storage dam _____ feet, active reservoir capacity _____ acre feet, total reservoir capacity _____ acre feet, materials used in storage dam _____

Period of year during which storage will occur _____ (Mo Day) to _____ (Mo Day) inclusive

c Proposed well diameter is 20 inches, proposed depth of well is 300 feet

7 a Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years

b Estimated construction cost is $ 50,000.00

8 Description of proposed uses

a If water is **not** for irrigation N. A.

(1) Give the place of use of water _____ ¼ of _____ ¼ of Section _____ Township _____ Range _____ B M

(2) Amount of power to be generated _____ hp under _____ feet of head

(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____

(5) If water is to be used for other purposes describe _____

b If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	25E	11	40	40	40	40													160
"	"	12	40	40	40	40	40	40	40	40									320

Total number of acres to be irrigated 480

c. Describe any other water rights used for the same purposes as described above None

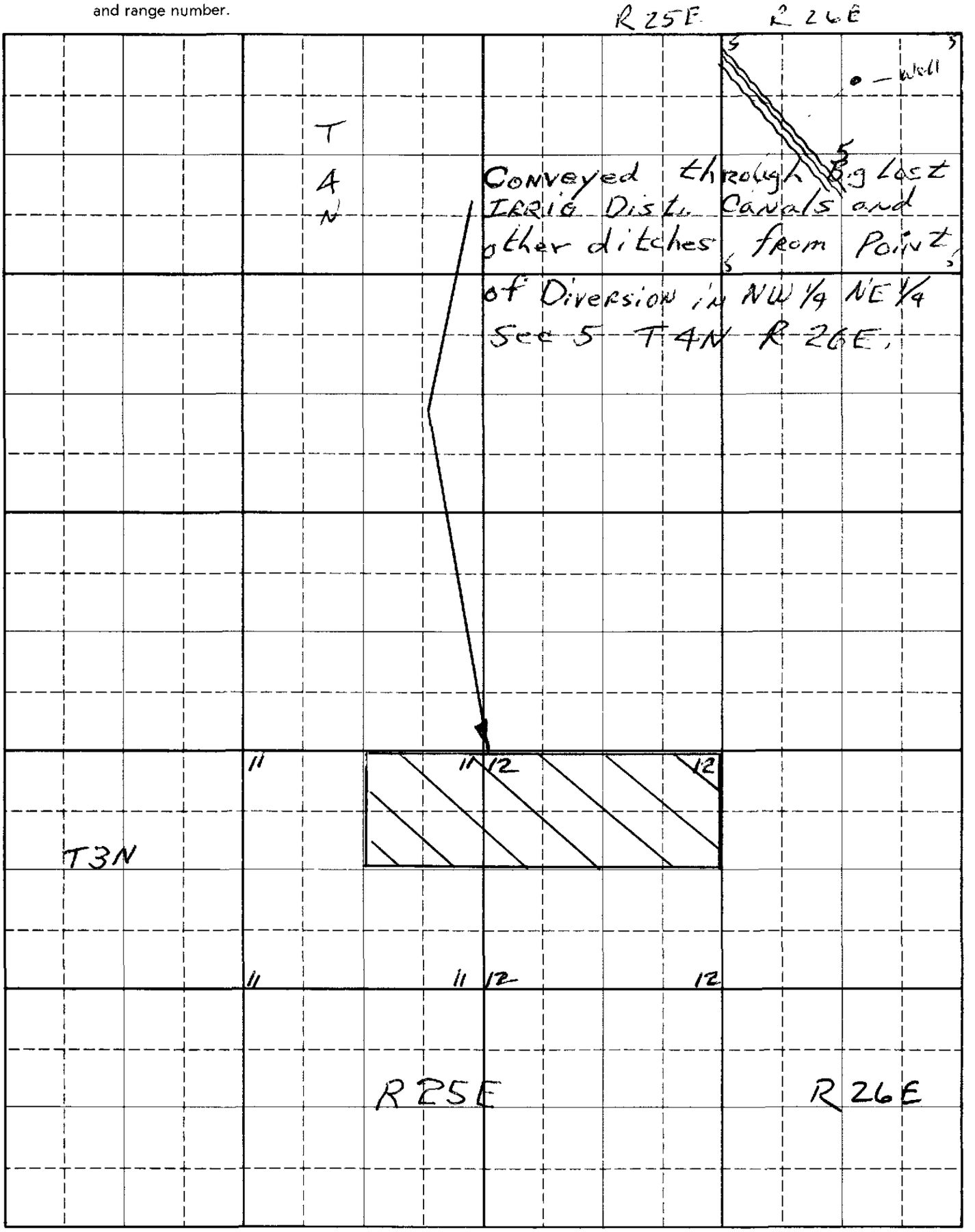
9 a Who owns the property at the point of diversion Don Hymas

b Who owns the land to be irrigated or place of use Applicant

c If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Will get an easement from Mr. Hymas to drill the well.

10. Remarks

11 Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Thomas Perkes
(Applicant)

Proposed Priority 9-23-1974

Received by MB Date 9-23-74 Time 3:10 P.M.
Preliminary check by MB Fee $ 95.00
Receipted by MB Date 9-23-74 # 13069
Publication prepared by MB Date 9-26-74
Published in Ucco Advertiser
Publication dates October 3 & 10, 1974
Publication approved DW Date 10/30/74
Priority reduced to _____ Reason _____

Protests filed by _____

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for (approval) denial by DF

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No 34-7080, and said application is hereby APPROVED

1. Approval of said application is subject to the following limitations and conditions.

   a SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before November 1, 19 79.

   c Other: A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

   The issuance of this permit in no way grants any right-of-way or easement across the land of another person.

2. Denial of said application is for the following reasons. _____

Witness my hand this 19 day of November 19 74.

R. Keith Higginson
Director

Application No. 34-7182

RECOMMENDED

CONDITIONS OF APPROVAL

☐ A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

☐ Measuring devices of a type approved by this Department shall be permanently installed and maintained at the point of diversion and the point of effluent discharge.

☐ Use of water under this permit is supplemental to all existing water rights with the same purpose and place of use.

☐ Maximum rate of diversion shall not exceed _____ c.f.s.

☐ Settling ponds shall be installed which are capable of reducing the silt load in the return water to such a level that the quality of the waters of _____ Creek will not be impaired for other beneficial uses.

☐ Return water shall be treated to insure that the effluent meets (interstate) (intrastate) stream water quality standards.

☐ Use of water under this permit is subject to control by the watermaster of State Water District No. _____, _____ River.

☐ The proposed well shall not be drilled within _____ feet of another well.

☒ The issuance of this permit in no way grants any right-of-way or easement across the land of another person.

☐ The permit shall not be assigned or sold without first securing the written approval of the Department of Water Administration.

☐ This permit cannot be assigned, mortgaged, or conveyed without complying with Section 42-208, Idaho Code.

☐ Other: _____

_____

_____

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Item	Initial	Date	
			Application No. 34-7050
			✓ Source
			✓ Point of Diversion
			✓ County
			✓ Quantity of Water and Period of Use
			✓ Description of Diverting Works
			✓ Time required for B/U of water
			✓ Place of Use or Acres Irrigated
			✓ Map
			✓ Signature
			✓ Fee
(1)	[illegible]	9/25/79	In form to receipt yes
(2)	"	"	Send Copies to:
			_____ Idaho State Health Department
			_____ Idaho Fish and Game Department
			N.A. _____ Bureau of Land Management
			_____
(3)	"	"	_____ Request Special Use Permit from U.S.F.S.
			_____ Request Easement from B.L.M.
			✓ Request Information from Applicant should be copy of assignment
(4)	"	"	In form for advertising yes
(5)	_____	_____	Platted on Map No. _____
(6)	"	"	Located within Water District No. 34
(7)	"	"	Critical groundwater area: yes _____ no ✓
(8)	"	"	Groundwater levels:
			_____ Declining, ✓ Stable, _____ Increasing
			(comment) W/L Bulletin #21
(9)	"	"	Other rights on the same place of use None
(10)	"	"	Comments: No use by the wells No conflicting water rights
(11)	MB	12/3/79	Affidavit of Publication received (date) Dec 3, 1979
(12)	MB	12-21-79	Final date for protests Dec 21, 1979 Protests received: yes _____ no ✓
(13)	RDC	10/30/79	All requested information received from agencies or applicant: yes _____ no ✓
(14)	"	"	Action recommended:
			✓ Approve _____ Deny
			9/25/79 Proposed Priority
			_____ Reason for Reduction _____
			✓✓ Measuring device required
			✓✓ See attached sheet for other conditions of approval
			_____ No special conditions for approval
(15)	District E		By RDC Date 10/30/79

Affidavit of Publication

I, [illegible], of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 ... consecutive weeks, commencing with the issue dated Oct. 3, 1974 ..... and ending with the issue dated Oct. 10, 1974

[illegible]

Subscribed and sworn to before me this 18 day of Oct., 1974

[illegible]
Notary Public

Residence: Arco, Idaho.
My commission expires 5/84, 1978

PUBLIC NOTICE

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Thomas Perkes, Moore, Idaho, has on 9-23-74 submitted Application No. 34-7080 for a permit to appropriate 8.0 cubic feet per second of water from a ground-water source by means of well and pump within the NW¼NE¼, Sec. 5, T. 4N, R. 26E, B M., Butte County; which will be diverted through the Moore Canal transported through existing Big Lost River Irrigation District distribution system, to be used from Apr 1 to Nov. 1 for the irrigation of 480 acres within the NE¼, Sec. 11, N½, Sec. 12, T 3N, R 25E, B M

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources. 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before October 21, 1974

R KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho on October 3 and October 10, 1974

THIS

RIGHT HAS BEEN

DECREED IN THE

SRBA

Decreed as A, B

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 28, 1992

M. Todd Perkes and Juel Aikele
c/o Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Re: In the Matter of Application for Transfer No. 3812/water right no.'s 34-07080A, 34-07136 and 34-07169 in the name of M. Todd Perkes and Juel Aikele

Dear Permit Holder:

Enclosed is a copy of the Final Memorandum Decision and Order in reference to the above mentioned permit.

Any person who does not agree with the decision of the department may request a rehearing before the Director within 20 days, or may appeal directly to the district court within 30 days of the date the decision is mailed.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enc: Final Order
Certificate of Mailing

1-17-91
2-20-91

Form 222a
6/78

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: RCW

1. Right number 34-7080A, -2136, 7169 Applicant M. Todd Perkes & Tuel Aikele
2. Type of right: ☐ Decree ☑ License ☐ Claim
3. Purpose of transfer: ☑ Change point of diversion ☐ Add diversion point(s) ☑ Change place of use
   ☑ Other Expansion (Appears to be an)
4. Check:
   a. ☑ Source ☑ Priority ☑ Amount ☑ Purpose ☐ Period of use
   b. ☑ Description of original point of diversion.
   c. ☑ Description of original place of use.
5. Amount of land &/or water transferred:
   a. ☑ All of right.
   b. ☐ Part of right *(NOTE! Part B should be filled in only if part of the right is owned by the applicant).*
   c. ☑ Check description of point(s) of diversion. ~~Map shows addn. POD in SE NW Sec 5 T4N R16E~~
   d. ☑ Check description of place of use.
   e. ☑ Check map (shows p.d. and p.u. after transfer). ~~No pu shown or in SE SE~~
   f. ☑ Check for correct signature, notarization, and fee.
   g. ☐ Check proof of ownership of right &/or land from which water is transferred.
   h. ☑ Check for expansion in use of right. Comments This appears to expand water rights from 480 acres over at least 2000 plus acres
   i. ☑ Check for existing water rights from same source, on land water is being transferred to.
      Right number(s) _____
   j. ☑ Is use within a Watermaster District? ☑ Yes ☐ No
      If yes, what district? 34

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____
2. Is transfer published correctly? ☑ Yes ☐ No
3. Protest received? ☑ Yes ☐ No

RECOMMENDED ACTION

1. ☐ Approve
2. ☐ Deny
3. Conditions* _____
4. By _____ Date _____

** All uses within Watermaster Districts require special conditions.*

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FALLS OFFICE

FRED J HAHN
KENT W FOSTER
ROBERT E FARNAM
WILLIAM D FALER
STEPHEN E MARTIN
CHARLES A HOMER
GARY L MEIKLE
MICHAEL D CRAPO
GAYLE A SORENSON
DONALD L HARRIS
MARIE T FEELEY
JOHN G SIMMONS
ROBERT M FOLLETT

WEST ONE BANK
P O BOX 50130
IDAHO FALLS IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

KEY FINANCIAL CENTER
702 W IDAHO SUITE 610
BOISE IDAHO 83702

TELEPHONE (208) 343-0820
TELEFAX (208) 343-8078

BOISE OFFICE

WM LYMAN BELNAP P C
RANDALL B REED

ARTHUR W HOLDEN
(1877 1967)
ROBERT B HOLDEN
(1911 1971)
TERRY L CRAPO
(1933 1982)
WILLIAM S HOLDEN
(1907 1988)

August 21, 1991

RECEIVED
AUG 2 6 1991
Department of Water Resources

Gary Spackman, Manager
Water Rights Permits Section
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720-9000

RE: Application for Transfer No. 3812/Water Rights Nos. 34-7080A, 34-7136 and 34-7169 in the Name of M. Todd Perkes and Juel Aikele

Dear Mr. Spackman:

We are writing this letter in response to the Order herein, dated July 29, 1991, to identify lands as places of use for the three water rights sought to be transferred. Mr. Aikele suggests the following:

LICENSE NO.	PLACE OF USE
34-7080A	South half North half, Section 6, Township 3 North, Range 26, EBM.
34-7136	North half South half, Section 6, Township 3 North, Range 26, EBM.
34-7169	South half South half, Section 6, Township 3 North, Range 26, EBM.

If this suggestion is unsatisfactory for some reason, virtually any of the approximately 2,314 acres operated by Mr. Aikele as shown in the application, exhibits and claims would be acceptable.

The only other comments we would have relate to Findings of Fact Nos. 5, 6, and 10. Reference is made to a "permit" and a "decision". Perhaps action has been taken of which we are unaware, but our file reflects, and our understanding has been, that a permit for Application No. 34-7296 has never been issued. We were aware of a "Proposed Memorandum Decision", dated July 14, 1989, and that an Exception, dated August 3, 1989, was filed on behalf of the applicants.

Later in 1989, we thought this matter was consolidated with several other pending applications for resolution and that in about April of 1990 a decision was made to hold all these matters in abeyance pending the outcome of the adjudication.

As we were preparing in connection with the consolidated proceeding, we took the deposition of Mr. Steve Baker, who, it had been represented to us, was the IDWR hydrologist responsible for developing the information which resulted in the designation of the so-called "transition zone". We thought Mr. Baker's testimony was fairly clear that the data available for establishment of the "transition zone" was very limited, and that the lines drawn were really quite arbitrary. We also understood there was virtually no evidence to establish whether the Aikele well impacted river flows. We have further understood that all the information and analysis of this issue since that time suggests that, in fact, the Aikele well has no impact on river flows. Pumping of the Aikele well undoubtedly has some impact on groundwater levels, especially near the well, but we were unaware of any competent evidence to the effect that this well impacts water flows in the river.

Most of the information relating to the establishment of the "transition zone" and the relationship of the Aikele well to river flows was not presented at the hearing on this application for transfer, and it seemed to us that it was not particularly relevant to the specific issues at hand. We wonder if the information contained in Findings of Fact 5 and 6 is really essential to the decision and especially if a finding

that the Aikele well affects river flows is not also premature. If there truly is conclusive evidence of such an impact, we are still unaware of it, and it seems contrary to the best information available to us. It might be appropriate to re-work these findings, if our understanding of the procedural status of Application No. 34-7296 and the status of the development and analysis of the factual data is not grossly mistaken.

Please advise if you require anything further.

Yours very truly,

Kent W. Foster

#3840.00/srs

cc: Roger D. Ling, Esq.
Mr. Lawrence Babcock
Mr. Juel Aikele

LING, NIELSEN & ROBINSON
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RUPERT IDAHO 83350

ROGER D LING
ROBERT M NIELSEN
BRENT T ROBINSON
DAVID W. HALEY

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

August 14, 1991

RECEIVED
AUG 15 1991
Department of Water Resources

Mr. Gary Spackman
Hearing Officer
Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720

Re: In the Matter of the Application for Transfer of Water Right Nos. 34-7080A/34-7136/34-7169 in the Name of M. Todd Perkes and Juel Aikele

Dear Mr. Spackman:

Enclosed please find Exceptions to Proposed Memorandum Decision and Order in regard to the above Applications.

Very truly yours,

Roger D. Ling

RDL:rah
Enclosure

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFERS OF WATER RIGHT NOS. 34-0032/34-0259 IN THE NAME OF KIRBY A. JENSEN & JUEL AIKELE AND NOS. 34-7080A/ 34-7136/34-7169 IN THE NAME OF M. TODD PERKES & JUEL AIKELE	EXCEPTIONS TO PROPOSED MEMORANDUM DECISION AND ORDER

COMES NOW Big Lost River Irrigation District, one of the protestants to the above Application, and presents the following exceptions to the proposed Memorandum Decision and Order dated July 29, 1991 received on August 1, 1991, to-wit:

1. The proposed Order should provide that the use of water on the lands originally licensed under Water Right Nos. 34-7080A, 34-7136 and 34-7169 is hereafter prohibited.

2. The proposed Order should contain the following provision, to-wit:

> Prior to diverting water under this approval, a measuring device shall be installed and be maintained in good working order as determined by the department at the point of injection into the canal or other delivery system and another shall be installed and maintained at the point of rediversion from the canal or delivery system to the lands to be irrigated. Measuring devices shall be of a type acceptable to the director of the department.

3. The proposed Order should provide the following provision, to-wit:

> This approval does not constitute an easement or right-of-way across the lands of another; nor does it authorize the use of any canal, ditch, well or pipeline owned by another.

4. The proposed Order should be amended to provide the following, to-wit:

> The well in the SW¼NW¼ of Section 5, Township 4 North, Range 26 East of the Boise Meridian from which a portion of the rights to the diversion of water are transferred shall be rendered inoperable. The means used by the applicants to render the well inoperable shall be a method acceptable to the director of the department. Thereafter, the well shall not be made operable again until the director acknowledges in writing that a valid right exists to divert water from the well.

5. The proposed Order shall be amended to provide the following, to-wit:

> The rate of diversion from the well located in the SW¼SE¼ of Section 21 and the rate of diversion from the well located in the SE¼NW¼ of Section 5 shall not have a combined rate of diversion in excess of 12.43 cfs.

6. The proposed Order should provide the following, to-wit:

> The operation of the two wells under this transfer shall be under the control of the watermaster of the water district in which said wells are located.

The above inclusions to the proposed Order are necessary to insure that the use of the water under the three (3) licenses under this transfer is not expanded by increasing the rate of diversion or the place of use of said water under this transfer.

RESPECTFULLY SUBMITTED this 14th day of August, 1991.

LING, NIELSEN & ROBINSON

By: Roger D. Ling
Roger D. Ling
Attorneys for Big Lost River Irrigation Dist. - Protestant

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of August, 1991, I served a copy of the foregoing EXCEPTIONS TO PROPOSED MEMORANDUM AND ORDER upon:

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
Attorneys at Law
P.O. Box 50130
Idaho Falls, Idaho 83405

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorney at the foregoing address.

Roger D. Ling
Attorney for Big Lost River Irrigation District - Protestant

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 30, 1991

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Please find enclosed a copy of the Proposed Memorandum Decision and Order and Order Issuing Proposed Memorandum Decision for application for transfer no. 3812/water right nos. 34-7080A, 34-7136 and 34-7169 in the name of M. Todd Perkes and Juel Aikele.

Any party who disagrees with the Proposed Decision may file exceptions to the decision within fifteen (15) days of service of the Proposed Decision.

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 30, 1991

Roger Ling
P.O. Box 396
Rupert, ID 83350

Dear Mr. Ling:

Please find enclosed a copy of the Proposed Memorandum Decision and Order and Order Issuing Proposed Memorandum Decision for application for transfer no. 3812/water right nos. 34-7080A, 34-7136 and 34-7169 in the name of M. Todd Perkes and Juel Aikele.

Any party who disagrees with the Proposed Decision may file exceptions to the decision within fifteen (15) days of service of the Proposed Decision.

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

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JUL 2

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 30, 1991

Lawrence Babcock
Moore, ID 83255

Dear Mr. Babcock:

Please find enclosed a copy of the Proposed Memorandum Decision and Order and Order Issuing Proposed Memorandum Decision for application for transfer no. 3812/water right nos. 34-7080A, 34-7136 and 34-7169 in the name of M. Todd Perkes and Juel Aikele.

Any party who disagrees with the Proposed Decision may file exceptions to the decision within fifteen (15) days of service of the Proposed Decision.

Respectfully,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

Attorneys for Applicants M. Todd Perkes and Juel Aikele

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFERS OF WATER RIGHTS NOS. 34-0032/34-0259 IN THE NAME OF KIRBY A. JENSEN AND JUEL AIKELE AND NOS. 34-7080A/34-7136/34-7169 IN THE NAME OF M. TODD PERKES AND JUEL AIKELE.	BRIEF OF APPLICANTS M. TODD PERKES AND JUEL AIKELE

This brief is filed by M. Todd Perkes and Juel Aikele, applicants, at least in partial response to the "Post Hearing Brief of Protestant Big Lost River Irrigation District". To some extent, we have not taken seriously certain of the assertions of fact and law argued in the protestant's brief. Many of those conclusions of fact or law do not seem to us to accord with reality, or what we understood to be the competent testimony and evidence. Some of the witnesses were just not credible, or their testimony was largely irrelevant or without adequate foundation.

Most of protestant's arguments regarding the groundwater table within the irrigation district and the effect of transferring decreed or licensed water rights for use on lands outside the boundaries of the irrigation district appear to be very similar to the arguments presented and resolved by the Idaho Supreme Court nearly forty years ago in the case of Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952). That case involved this very basin and this very protestant. Apparently, the protestant has never managed to accept that decision; its arguments have not changed significantly over the years. Besides introducing no competent evidence to establish its theories with respect to perched aquifers, the building up of the groundwater table through irrigation within the district, and its version of the public interest, protestant cites no legal precedent or authority for any of its propositions or claims respecting groundwater or the so-called "plan of operation" which is held up as some sort of sacred document forever barring irrigation of lands located outside the boundaries of the Big Lost River Irrigation District.

Obviously, the Hearing Officer will make the judgments with respect to the appropriate weight to be given to any of the testimony or exhibits placed in evidence. Just as obviously, the Hearing Officer, and ultimately the Director, will decide any issues of law raised by the protests. Our

objective is to address issues that might be deemed pertinent and we hope this brief will be of assistance to the Hearing Officer.

As we understood the purpose of the hearing held on May 16 in Arco, it was to consider (1) the protests to the application for transfer of Water Rights Nos. 34-0032 and 34-0259 filed by Kirby A. Jensen and Juel Aikele and (2) the protests to the application of transfer of Water Rights Nos. 34-7080A, 34-7136, and 34-7169 filed by M. Todd Perkes and Juel Aikele. We did not understand the purpose of the hearing to be to consider the protests to or the merits of application for Water Right No. 34-7296.

The requirements of Idaho law appear to obligate the Director to consider the following items in his consideration of whether to approve the proposed transfer in whole or in part or upon conditions:

> 1. Whether any other water rights are injured thereby;
>
> 2. Whether the change constitutes an enlargement in use of the original right;
>
> 3. Whether the change is consistent with the conservation of water resources within the State of Idaho;
>
> 4. Whether the change is in the local public interest as defined in §42-203A(5), Idaho Code, and

5. Whether the change would significantly affect the agricultural base of the local area.

Idaho Code §42-222.

According to the case law, the Director also has jurisdiction to determine such issues as common law abandonment and statutory forfeiture. Jenkins v. State, Dep't of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982). We do not believe any significant issues have been raised with respect to conservation of water resources or the local public interest in connection with either application for transfer, and it seems unlikely to us that the proposed change could have any significant effect upon the agricultural base of the local area.

JENSEN--AIKELE TRANSFER

This transfer proposes a change in the place of use of some 73 miner's inches of the waters of Big Lost River from some 80 acres of land in Section 17 of Township 4 North, Range 26 East to some 80 acres in Section 13 of Township 3 North, Range 25 East. We heard no testimony or other evidence that suggests to us that there is any likelihood of offending any of the five criteria of Idaho Code §42-222.

Big Lost River Irrigation District protested on the grounds that the Moore Canal has insufficient capacity for this 73 miner's inches to be carried the additional approximately

two miles to where it can be delivered into Mr. Aikele's ditch system. At, and since the hearing, the protestant, Big Lost River Irrigation District, has also raised the issues of abandonment and/or forfeiture.

While the most desirable conveyance for this 73 miner's inches would probably be the extra two miles of the Moore Canal, that is by no means the only alternative. It is true that Mr. Aikele has not yet obtained a conveyance right through the remainder of the Moore Canal. We think this issue is probably not a matter for the determination of the Director in this transfer proceeding. Normally, the Director's decisions contain a clear disclaimer to the effect that the approval of a transfer does not carry any authority with respect to conveyance rights. We presume that Chapter 11 of Title 42 of the Idaho Code was designed to provide for the obtaining of necessary conveyance rights independently of the transfer statutes and procedures. See also, Canyon View Irr. Co. v. Twin Falls Canal Co., 101 Idaho 604, 619 P.2d 122 (1980).

The protestant now argues that the water right has been abandoned or forfeited. We thought the evidence showed that during at least two of the previous five irrigation seasons, the water was used for irrigation purposes. We heard no evidence that to us suggests any intent to abandon the rights.

Abandonments and forfeitures are not favored by the courts and all intendments are to be indulged in against abandonment or forfeiture. Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937); Hodges v. Trailcreek Irr. Co., 78 Idaho 10, 297 P.2d 524 (1956). Abandonment and forfeiture must also be proved by clear and convincing evidence. Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976); Jenkins v. State, Dep't of Water Resources, supra.

It appears clear to us that this proposed application for transfer must be approved. Undoubtedly, the applicants will need to make arrangements within an appropriate time thereafter for conveyance of water under such rights.

PERKES--AIKELE TRANSFER

Apparently, the main issue in connection with this proposal is enlargement, although there also appears to be some type of injury argument.

With all due respect, we do not see how continued diversion of groundwater under the three licensed rights, or a portion thereof, can somehow constitute a type of general injury to the aquifer as a whole or the lands irrigated within the boundaries of the irrigation district in some general sense. There is no proposal to divert, or as we hope to point out, to use, any more water than the valid licensed rights authorized to be diverted and used. Certainly, there is no

evidence that there will be injury to some particular water right or rights because of the continued diversion and use.

There is not a great deal of case law to help us fully understand what the legislature may have intended by the Idaho Code §42-222, prohibition against an enlargement in use of the original right. We have tried to contemplate the possibilities, but have probably not been able to conceive of everything that might be claimed to be some type of enlargement. It makes one wonder what the legislature had in mind, what policy the provision was designed to implement. Was the enlargement concept intended only as a further extension of the no injury rule? Is it intended to address a more public or general type of potential injury as opposed to a direct injury to other water rights? Or is it something altogether and entirely different from the no injury rule? Unfortunately, there appears to be no good statutory or regulatory definitions, and we have been unable to locate any significant elucidation by the courts. Undoubtedly, the legislature at least meant to prohibit enlargements that would significantly increase diversions and use beyond the diversion and use legally authorized by the original right. However technical the application of this concept was intended to be, and whether some standard of reasonableness is to be applied, is probably not clear, but we suggest that strained and hypertechnical

applications are seldom appropriate and reasonableness is almost always required.

Protestant complains that this application for transfer seeks to turn the three licensed Perkes' rights into a single right. As we understand the point, it is that Right No. 34-7136 has a diversion rate of 5.5 cfs for 160 acres, Right No. 34-7080A has a diversion rate of 2.67 cfs for another 160 acres, and Right No. 34-7169 has a diversion rate of 4.48 cfs for a third 160 acres and therefore each right must be separately monitored to assure that no more than the particular amount allowed to be diverted under each one may be used on the specific 160 acre-parcel to which it is appurtenant.

It appears to us that the licenses themselves recognize the impracticability of such an application, and, in the sense complained of by protestant, already treat the three rights as a single right for the irrigation of the entire 480 acres of land. The "works" described by each license consists of the same two wells which have a combined capacity of 12.43 cfs. The points of diversion for each of the three rights is identical, and there is no limitation or requirement that either well be limited to a particular amount. The licenses appear to contemplate that as the water is produced by the wells, it will be commingled in a single ditch and be delivered to the place of use in that mixed condition. Actually, the

ditch or canal, through which the water is carried, also carries water diverted under several other water rights of other right holders and for use on other lands. Each license, regardless of the different diversion rates, then contains a volume limitation of 480 acre-feet per year. It seems obvious that the contemplation of the licenses is that the water will be combined for the irrigation of the entire 480 acres and that the volume limitation is a 3.0 acre-feet per acre standard. The licenses each contain the identical condition providing that the rights are to be combined; the language is:

> This right when combined with rights [here each license refers to the other two licenses by number] shall not exceed 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of rediversion located within the SE1/4 NE1/4, Section 11, Township 3 North, Range 25 E.

Finally, the identical condition that each right shall not provide more than .02 cfs (1 miner's inch) per acre for the 160 acres is placed in the license. So, either 5.5 cfs can nevertheless provide 1 inch per acre or 480 acre-feet for 160 acres, 2.67 cfs can provide 1 inch per acre or 480 acre-feet for 160 acres, and 4.48 cfs can provide 1 inch per acre or 480 acre-feet for 160 acres, or the combination of the three rights can provide 1 inch per acre or 1,440 acre-feet for the entire 480 acres.

The total of the diversion rates of the three licenses is 12.65 cfs, but each license recognizes that the combined capacity of the diversion works was 12.43 cfs at the time the Department made the measurement. The condition also recognizes that there was a transmission loss in the conveyance system of some 3.94 cfs or slightly over 30%, from the point of diversion to the place of rediversion or delivery from the common conveyance system.

We do not see why similar principles could not reasonably be applied to this proposed transfer. Instead of just mixing three rights appurtenant to 480 acres of land, applicants are in essence suggesting a mixture of these three rights for 480 acres with eight other licensed rights (and the two small decreed rights under the Jensen-Aikele proposed transfer--although these small decrees have not been considered in this analysis) which are appurtenant to some 2,169.58 acres, for the irrigation of a total of up to 2,284.3 acres, when it appears from the records that the combination of these three Perkes' licensed rights and the other eight licensed rights are appurtenant to a total of at least 2,649.8 acres. (See the information in the attached Appendix for detail on how we arrived at our figures.)

We have never before heard an argument that application of water to fewer acres than the total to which the rights are

appurtenant, constitutes an enlargement. In formulating such an argument, one apparently ignores the existence of all other appurtenant rights and concludes that because the water under these three will be commingled, therefore somehow the water diverted under the three rights will probably reach and contribute to the irrigation of more than 480 acres of land and hence, we have an enlargement. Under this theory, although the total acreage remains the same, anytime one seeks to move a water right to contribute to the total supply for such land, if the acres to which the additional water right is sought to be transferred are greater in number than the acres to which the right is appurtenant, there would be an enlargement. It would not matter, under this logic, if there was only one right so sought to be transferred, or ten, or a hundred, or if the amount or amounts of such rights were sufficient to flood the land one hundred feet deep, so long as each right sought to be transferred is appurtenant to a smaller number of acres than the proposed new place of use, it would nevertheless constitute an enlargement.

We hope such a result is obviously ridiculous. It seems to us that the rights already appurtenant to the proposed place of use must be considered, and as appears to have been the case when the identical conditions were written into the three Perkes' licenses, the fact that water diverted under each right

will be commingled or mixed with water diverted under the other appurtenant rights should be taken into account. It seems apparent that when water diverted under a number of rights is commingled and then applied to land, the water so diverted under each right contributes proportionately to the irrigation of the whole.

If the problem is the manner in which the new place of use is described in the application, we renew our invitation to the Department to redescribe it in any way it deems most appropriate. We have described the place of use in three different ways now, and the only one that appears to have satisfied the Department is to us the most inaccurate and hence inappropriate. Last year, we first described the entire acreage where molecules of water diverted under the three rights might ultimately be applied for irrigation. We noted that we wanted it clearly understood that water diverted under the three rights would not be the exclusive means of irrigating the total, but rather would be mixed with water diverted under several other rights to irrigate the whole so that the actual proportion irrigated with water diverted under these rights could not exceed 480 acres. The application was returned and we were informed IDWR would not process it unless we changed the description to some particular 480 acres.

This year, the same basic facts exist, but we are even more sensitive to the propensities of the protestors. Applicant hopes to avoid arguments that because the water from the three rights are commingled with other water and probably finds it way to some of the other land irrigated by applicant, therefore IDWR must issue a Cease and Desist Order because water diverted under these three rights is possibly being applied to lands other than the specific 480 acres which might be shown, as was done last year, in the approved transfer.

Why would conditions such as those contained in the three existing licenses not be reasonably sufficient to protect against any actual or theoretical enlargement in this case? There are flow rate limitations contained in the three licenses; and there is no proposal to exceed them. There is even a combined flow rate limitation on diversions, as well as on rediversions or deliveries from the conveyance system after deducting transmission losses; but there is no proposal to exceed them. If the rediversion or delivery rate needs to be adjusted, we assume IDWR is competent to make the correct adjustments. Perhaps most importantly, there are volume limitations on diversions; and there is no proposal to exceed them. It seems to us that this may be the best and easiest way to control enlargement; we understand these volume limitations to be based on studies of actual field requirements. If so,

and if the studies demonstrate that 1,440 acre-feet is reasonably essential to adequately raise crops on 480 acres, how then could the diversion of 1,440 acre-feet of water, diminished as it will be through the conveyance systems by seepage, evaporation and perhaps some phreatophyte use, possibly benefit more plants than can properly be grown on 480 acres of land?

Even though the water diverted under these three rights will be mixed with other water diverted pursuant to other water rights, and the total will be applied to more than 480 acres of land, is it not fair to allocate some portion of the water used by each plant, or applied to each acre, to each water right? If, for instance, the water diverted under these rights constitutes 25% of the total water supply for a combined total of some 1,775 acres irrigated, can it really be argued that the application is proportionately to more than 25% of that acreage (443.75 acres)? The exact amounts diverted under each right will undoubtedly vary from day-to-day, or maybe even more frequently, and hence the relative proportions will probably vary as well. It seems to us that the most reasonable condition to protect against the violation of the policies underlying the prohibition against enlargement in this situation is the volume limitation. As we say, we understand that figure to at least be based upon University of Idaho

studies which would show average crop requirements in this area for 480 acres. If it takes 1,440 acre-feet to produce an adequate crop on 480 acres, it appears a diversion of that total or less could not be an enlargement.

There is no competent evidence in this record to show that there will be any demonstrable or measurable different impact upon the aquifer or individual wells withdrawing water from the aquifer as a result of this proposed transfer. No greater amounts will be diverted, for any longer time periods, or any greater total volume, than provided by the existing three licenses. Most of the land to which the water is proposed to be applied is closer to the proposed points of diversion than was previously the case, and only a relatively small portion is further away. Whereas both points of diversion were previously in Section 5 of Township 4 North, Range 26 East, and a total of 12.43 cfs was diverted therefrom, only up to 4.0 cfs will now be diverted there, and the balance of up to 8.43 cfs will be diverted from a well over three miles further south and down gradient in the aquifer from most domestic and irrigation wells.

CONCLUSION

In conclusion, we again invite the Department of Water Resources to adjust the description of the place of use in any satisfactory matter which accomplishes the objective of the applicant which is to add the water authorized for diversion

under the three Perkes' rights to his other existing water supplies for the appropriate irrigation of the lands upon which crops will be grown. We believe the existing conditions imposed upon the exercise of the licensed rights are reasonably adequate to protect against an enlargement. If such conditions can be better written to accomplish the objective of the transfer, it is our belief that the Director has the necessary authority to do so.

DATED this 11th day of June, 1991.

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 11th day of June, 1991.

Document Served: BRIEF OF APPLICANTS M. TODD PERKES AND JUEL AIKELE

Attorneys Served:

Roger D. Ling, Esq. (MAIL)
LING, NIELSEN & ROBINSON
P.O. Box 396
Rupert, Idaho 83350

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

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A P P E N D I X

This Appendix is attached to more fully illustrate the figures used in the analysis in the brief. As of the date of the filing of this application for transfer, Mr. Juel Aikele was the owner and operator of 2,284.3 acres of irrigable land. This figure is derived from his pending SRBA claims and while the acreages were not all determined by an engineer from an actual survey of each piece of property, Mr. Aikele made every effort in his estimate to be as accurate as he could.

1,735.3 acres is within the lands shown in yellow on applicants' Exhibit No. 1 and 549 acres is located within the area shown in pink. Two different colors were used because when the SRBA claims were first filed, the 549 acres, within the area colored in pink, was owned and operated exclusively by Mr. Aikele's son, Mike, who depended upon water diverted in Sections 5 and 8 of Township 4 North, Range 26 East from two wells under licensed Rights Nos. 34-7035 and 34-7122, and transported to the place of use through the Timberdome Canal Company's system. The 1,735.3 acres owned and operated by Juel Aikele at that time, shown within the area colored in yellow, depended upon water diverted from wells into either the Timberdome Canal Company's system or a private ditch system of Mr. Aikele and conveyed to the place of use under six licensed rights:

34-2315, 34-2358, 34-2417, 34-2419, 34-2429B and 34-2472. Mr. Juel Aikele has now succeeded to Mike Aikele's former ownership of the lands in the pink area, as well as Mike's former interest in some of the lands in the area colored in yellow.

We have referred to the 549 acres and the 1,735.3 acres separately for some purposes. The points of diversion under this application would include one of the original Perkes' wells in the SE1/4 of the NW1/4 of Section 5, Township 4 North, Range 26 East, and a well in the SW1/4 of the SW1/4 of Section 21, Township 4 North, Range 26 East. It is anticipated that up to 4.0 cfs would be diverted from the Perkes' well in Section 5, and delivered through the Timberdome Canal system for use on Aikele lands which receive water through that system, including the 549 acres in the area colored in pink. Up to 8.43 cfs would be diverted from the well in Section 21 and to transport it through the private ditch system to much of the 1,735.3 acres in the area colored in yellow.

Although the total of the 549 acres plus 1,735.3 acres is 2,284.3 acres, about 140 acres of the 549 and some 370 acres of the 1,735.3 are in government set-aside programs and will not be cropped this year as would be done in a more normal situation. Portions of the set-aside lands will have water applied only at times when the water is not needed on the crop lands, primarily late in the season. Standard crops of alfalfa and small grains will be grown on about 1,775 acres this year.

Although the SRBA claims show the water rights as they have been used for several years; that is, Rights Nos. 34-7035 and 34-7122 for the 549 acres, and Rights Nos. 34-2315, 34-2358, 34-2417, 34-2419, 34-2429B and 34-2472 for the 1,735.3 acres, the existing licenses, transfers and ownership records of which we are aware appear to show the following:

LICENSE NO.	AMOUNT (CFS)	ACREAGE	OWNERSHIP	NOTATIONS ON ACREAGES	TOTAL ACRES
34-2515	7.02	788	Juel owns 100%	See Transfer No. 1066	788
34-2358	5.60	664	Juel owns 100%	This 664 acres is all within the 788 acres under 34-2515	0
34-2417	2.67	133.8	Juel owns 60%	2.67 cfs and 133.8 acres are 60% of the original license	133.8
34-2419	2.01	100.5	Juel owns 50%	2.01 cfs and 100.5 acres are 50% of the original license	100.5
34-2472	6.82	393	Juel owns 100%		393
34-2429B	2.78	121.78	Juel owns 100% of B, which is about 60% of the original license	See Transfer No. 2991	121.78

LICENSE NO.	AMOUNT (CFS)	ACREAGE	OWNERSHIP	NOTATIONS ON ACREAGES	TOTAL ACRES
34-7035	5.62	417	Juel owns 100%		417
34-7122	4.31	215.5	Juel owns 50%	4.31 cfs and 215.5 acres are 50% of the original license which was purchased 1/2 by Don Aikele and 1/2 by Mike Aikele	215.5
TOTALS	36.83				2169.58

9729i/srs

Randy Pehrson
Dorain Pehrson
P.O. Box 38
Mackay, ID 83251

Neal Davis
General Delivery
Mackay, ID 83251

Eva Pence
603 Park Avenue
Mackay, ID 83251

David Kimball
P.O. Box 357
Mackay, ID 83251

James D. McKelvey
P.O. Box 240
Mackay, ID 83251

Lela Warner
Box 506
Mackay, ID 83251

Dean Wall
P.O. Box 187
Mackay, ID 83251

Fred O. Friedl
P.O. Box 12
Mackay, ID 83251

Dale A. Shawn
Box 532
Mackay, ID 83251

Gary Wheeler
P.O. Box 915
Moore, ID 83255

Edward F. Armstrong
Carolyne Armstrong
P.O. Box 243
Mackay, ID 83251

Jack Evans
Box 186
Mackay, ID 83251

Joe Ausich
P.O. Box 61
Mackay, ID 83251

Dave Coburn
Rt. 1, Box 1065
Leslie, ID 83255

J. W. McCaslin
Box 26
Mackay, ID 83251

Marlin Anderson
Judith D. Anderson
Rt. 1, Box 18
Mackay, ID 83251

Faye Jardine
Box 182
Mackay, ID 83251

Faye White
Box 324
Mackay, ID 83251

Ben Schmidt
Star Route
Mackay, ID 83251

Ronald F. Williams
Box 184
Mackay, ID 83251

Karen Bartel
Rt. 1, Box 17
Mackay, ID 83251

George J. Gilbert
Wanda Gilbert
Rt. 1
Darlington, ID 83231

Henry Williams
Box 272
Mackay, ID 83251

Dick McCaslin
Nancy McCaslin
Box 455
Mackay, ID 83251

Thresa Landon
Box 3
Mackay, ID 83251

Wayne Storer
Box 393
Mackay, ID 83251

Scott McAffee
Box 282
Mackay, ID 83251

Kenneth Williams
Box 97
Mackay, ID 83251

Alton T. Sayer
Edythe L. Sayer
Box 101
Mackay, ID 83251

Ardell G. Warner
Star Route
Mackay, ID 83251

Lin T. Hintze
Box 125
Mackay, ID 83251

Timothy P. Sayer
Rt. 1, Box 4-A
Mackay, ID 83251

White Duke
Rt. 1, Box 53
Darlington, ID 83231

Kirby A. Jensen
Juel Aikele
Rt. 1, Box 50
Moore, ID 83255

Lawrence R. Babcock
Moore,
Idaho 83255

David B. Bleak
Lois M. Bleak
Rt. 1, Box 27
Moore, ID 83244

Leon L. Coon
Box 446
Arco, ID 83213

Luther Winger
Box 341
Arco, ID 83213

W. M. Sayer
Nolan Sayer
Box 213
Mackay, ID 83251

Frank L. Garnett
Box 907
Moore, ID 83255

Glen T. Guthrie
Box 319
Arco, ID 83213

Dusty Williams
Star Route
Mackay, ID 83251

Lloyd E. Jensen
Box 91
Moore, ID 83255

Philip S. Moffett
Rt. 1, Box 120-B
Moore, ID 83255

Vivian W. Ivie
Route 1
Darlington, ID 83231

Larman D. Andersen
Rt. 1, Box 52
Moore, ID 83255

Dale Huffaker
Rt. 1, Box 56
Darlington, ID 83231

Wade Vaughan
P.O. Box 123
Darlington, ID 83231

Lois A. Allan
Box 85597
Los Vegas, NV 89185

LaVell R. Purser
Rt. 1, Box 120A
Moore, ID 83255

F. Scott Colson
P.O. Box 173
Mackay, ID 83251

Delwin Hale
Box 463
Arco, ID 83213

Randy Purser
Rt. 1, Box 121
Moore, ID 83255

Tim Palmer
Rural Route 1
Mackay, ID 83251

Protestant
Rt. 1, Box 60
Darlington, ID 83231

W. A. Rhoades
Rt. 1
Darlington, ID 83231

Dan Andreason
Box 503
Mackay, ID 83251

Denise Moss
Rt. 1, Box 104
Moore, ID 83255

Dennis Braswell
Rt. 1
Arco, ID 83213

Marx Hintz
Rt. 1, Box 14
Mackay, ID 83251

Wayne Schwartz
Box 903
Moore, ID 83255

Karen Monson
Tinge Monson
Rt. 1, Box 30
Darlington, ID 83231

Don McKelvey
Mackay,
Idaho 83251

Merlin L. Phillips
Rt. 1, Box 442
Arco, ID 83213

Max Sayer
Rt. 1, Box 1060
Leslie, ID 83255

Charlotte McKelvey
Star Route
Mackay, ID 83251

George Wheeler
Rt. 1
Moore, ID 83255

W. L. Sowards
Leota Sowards
Rt. 1, Box 85
Moore, ID 83255

Gerald Stewart
Box 59
Moore, ID 83255

Lewis Rothwell
Rt. 1, Box 405
Arco, ID 83213

Clyde W. Smith
Rt. 1, Box 63
Moore, ID 83255

Ewvin Mathews
Box 553
Arco, ID 83213

Big Lost River Irrig. Dist.
Box 205
Mackay, ID 83251

Norman R. Gilbert
Rt. 1
Darlington, ID 83231

Richard C. Rothwell
Rt. 1, Box 1010
Leslie, ID 83255

Merritt E. Lanier
Marie Lanier
Rt. 1
Darlington

Betty Halversen
Box 297
Mackay, ID 83251

Randy Nelson
Mackay, ID 83251

Anthony E. Madsen
Rt. 1, Box 446
Arco, Idaho 83213

Winn Rock
Box 416
Mackay, ID 83251

Reed Asay
Box 415
Mackay, ID 83251

Protestant
Rt. 1, Box 20A
Arco, ID 83213

Lloyd L. Smith
Rt. 1
Mackay, ID 83251

Rod Drews
Rt. 1
Mackay, ID 83251

Dale Smith
Rt. 1, Box 22
Moore, ID 83255

Melvin Ellwein
Vivian J. Ellwein
Rt. 1
Mackay, ID 83251

Eli Sayer
Rt. 1
Mackay, ID 83251

Joe Smith
Rt. 1, Box 22
Moore, ID 83255

Ernest Goff
Rt. 1
Mackay, ID 83251

Evan Sayer
Rt. 1
Mackay, ID 83251

Virgil Hail
Box 454
Moore, ID 83255

Lester Braswell
Rt. 1, Box 218
Arco, ID 83213

Art Storer
Rt. 1, Box 211
Mackay, ID 83251

Don Hymas
Rt. 1, Box 26
Moore, ID 83255

Robert Thornton
Rt. 1, Box 207
Arco, ID 83213

Don Cain
Star Route 1
Mackay, ID 83251

David Bleak
Rt. 1, Box 27
Moore, ID 83255

Craig Stewart
Rt. 1, Box 58-B
Moore, ID 83255

L. D. Linburg
Box 101
Mackay, ID 83251

Ruben L. Jensen
Moore,
Idaho 83255

Thelma Sayer
Leslie
Idaho 83249

Rowsel Ellis
Box 55
Mackay, ID 83251

Raymond N. Noble
Moore,
ID 83255

Dean Coburn
Leslie,
ID 83249

Ned R. Walker
Box 32
Arco, ID 83213

Albert C. Babcock
Rt. 1, Box 76
Moore, ID 83255

Randy Nelson
Mack a

Robert Thornton
Rt. 1, Box 204
Arco, ID 83213

Sept. 30, 1991

I received a Certified
Mail letter #0535 -

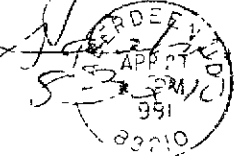
I have changed my
name to
Faye L. Hite-Forney
New Box 695
address Archbald, Idaho
83210 -

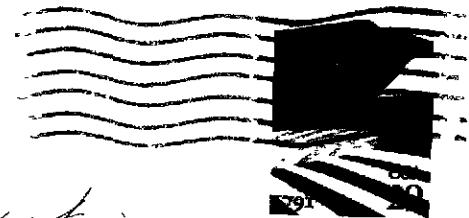
I moved and
need address -
Box 324
Murray,
Idaho
83849

JUL 29 1992

Department of Water Resources
Eastern District Office

Kaye White - Forestry
Box 6-25
Aberdeen,





State of Idaho
Dept. of Parks & Recreation
Extension Dist. Office
150 Sharp Suite 15
Jerome,
Idaho
83342

JUL 2 1992

State of Idaho
DEPARTMENT OF WATER RESOURCES
150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

April 25, 1991

ATTN: Deanna
Magistrate Court
Butte County Courthouse
Arco, ID 83213

Dear Deanna:

This is to confirm the use of the Courtroom, Butte County Courthouse, for water right conferences to be held by this Department beginning at 9:00 a.m. on Wednesday, May 15 and Thursday, May 16, 1991.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Assistant

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFERS OF WATER RIGHT NOS. 34-0032/34-0259 IN THE NAME OF KIRBY A. JENSEN & JUEL AIKELE AND NOS. 34-7080A/ 34-7136/34-7169 IN THE NAME OF M. TODD PERKES & JUEL AIKELE	NOTICE OF COMBINED HEARINGS

On June 7, 1988, Kirby A. Jensen & Juel Aikele, Moore, Idaho filed the above referenced application to transfer the public waters of the State of Idaho. On September 28, 1988, the Department received a protest against approval of said application from the Big Lost River Irrigation District. Additional protests were received from Randy & Doraine Pehrson, David Kimball, Dean Wall, Gary Wheeler, Joe Ausich, Marlin & Judith Anderson, Ben Schmidt, George J. & Wanda Gilbert, Thresa Landon, Kenneth Williams, Lin T. Hintze, James D. McKelvey, Fred O. Friedl, Edward F. & Carolyne Armstrong, Dave Coburn, Faye Jardine, Ronald F. Williams, Henry Williams, Wayne Storer, Alton T. & Edythe L. Sayer, Timothy P Sayer, Lela Warner, Dale A. Shawn, Jack Evans, J.W. McCaslin, Faye White, Karen Bartel, Dick & Nancy McCaslin, Scott McAffee, Ardell G. Warner, White Duke, George Wheeler, W. L. & Leota Sowards, Gerald Stewart, Lewis Rothwell, Clyde W. Smith, Ewvin Mathews, Norman R. Gilbert, Richard C. Rothwell, Merritt E. & Marie Lanier, Betty Halversen, Winn Rock, Lloyd L. Smith, Melvin & Vivian Ellwein, Ernest Goff, Lester Braswell, Robert Thornton, Craig Stewart, Thelma Sayer,

Dean Coburn, Randy Nelson, Reed Asay, Eli Sayer, Evan Sayer, Art Storer, Don Cain, L.D. Linburg, Rowsel Ellis, Ned R. Walker, Robert Thornton, Anthony E. Madsen, Dale Smith, Joe Smith, Virgil Hail, Don Hymas, David Bleak, Ruben L. Jensen, Raymond N. Noble, Albert C. Babcock, Leon L. Coon, Frank L. Barnett, Lloyd E. Jensen, Larman D. Andersen, Lois A. Allan, Delwin Hale, Denise Moss, Wayne Schwartz, Merlin L. Phillips, Lawrence R. Babcock, Luther Winger, Glen T. Guthrie, Philip S. Moffett, Dale Huffaker, LaVell R. Purser, Randy Purser, Dennis Braswell, Karen & Tinge Monson, Max Sayer, David B. & Lois M. Bleak, W.M. & Nolan Sayer, Dusty Williams, Wade Vaughan, F. Scott Colson, Tim Palmer, Dan Andreason, Marx Hintz, Don McKelvey, and Charlotte McKelvey. Mitchell Sorensen, Kurt Acor, and Herman Aikele. Protests acknowledgments sent to Vivian W. Ivie, W.A. Rhoades, Rod Drews, and Neal Davis were returned as undeliverable.

On January 15, 1991, M. Todd Perkes and Juel Aikele filed an application to transfer water rights identified by Nos. 34-7080A/34-7136/34-7169. On March 25, 1991, the Department received a protest against approval of said application from the Big Lost River Irrigation District. Additional petitions of protest were received and Lawrence Babcock was selected to represent and to notify the individuals of any proceedings by the Department.

The Department has set the matter of protests for hearing for 9:00 a.m., Thursday, May 16, 1991, in the Courtroom, Butte County Courthouse, Arco, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Date this 23rd day of April, 1991.

RONALD D. CARLSON
Eastern Regional Manager

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2	0675	Randy Morgan Johnson Box 138 Mackay										
3	0676	David Kimball Box 257 Mackay										
4	0677	James D McKelvey Jr Box 140 Mackay										
5	0678	Lela Warner Box 506 Mackay										
6	0679	Jesse Ripley Todd Perkes Box 5030 Idaho Falls										34-7080A/etc.
7	0680	Roger King PO Box 396 Rupert										"
8	0681	Laurence Babcock Box 66 Moore										
9	0682	M Todd Perkes Rt 1 Box 140 Arco Sacramento Ca										34-7080A/etc
10	0683	Travelers Hotel 37 Mendiz Ck Rd	.29	1.00					1.00			34-7249
11	0684	Lemar Anderson Rt 1 Box 52 Moore										
12	0685	Dale Smith Rt 1 Box 22 Moore										
13	0686	Lewis Rothwell Rt 1 Box 405 Arco			Total #0.97 12							
14	0687	Laurence Babcock Box 66 Moore										34-7249
15												

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FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

☆ U.S. G.P.O. 1985-478-804

PS Form 3877, May 1985

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
WEST ONE BANK BUILDING
P O BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

FRED J. HAHN
KENT W FOSTER
ROBERT E FARNAM
WILLIAM D FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L MEIKLE
MICHAEL D CRAPO
GAYLE A SORENSON
DONALD L HARRIS
RANDALL B REED
MARIE T. FEELEY
JOHN G. SIMMONS
ROBERT M FOLLETT

ARTHUR W HOLDEN (1877-1967)
ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

April 4, 1991

HAND DELIVERED

Harold W. Jones, Water Rights Supervisor
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

RE: Application for Transfer No. 34-7080A/34-7136/34-7169

Dear Mr. Jones:

We appreciate receiving your letter of April 3, 1991, and the attachments. We had heard last week from Mr. Juel Aikele that the protest period had expired and the protests were in. He had had some contact with Norm Young and indicated we might be hearing from Mr. Young about a possible date for a hearing.

We have not yet heard from Mr. Young, but it is most urgent that the matter be decided as soon as possible. We would like to request that the hearing be scheduled at the earliest possible moment.

In the hopes that if you know what our schedule permits, it will be helpful, it appears that I have hearings or trials scheduled April 16th, 17th, and 18th, and April 29th. If we could do this as early as the end of next week, or even April 15th or 19th, it would be greatly appreciated.

Yours very truly,

Kent W. Foster

#3840.00/srs

cc: Norm C. Young, Administrator

April 8, 1991

RE: Applications for Transfer No. 34-7080A/34-7136/34-7169

M. Todd Perkes/Juel Aikele
c/o Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

Gentlemen:

Enclosed please find an additional protest filed against the above referenced application.

If you have any questions, please feel free to contact this office.

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

pc: IDWR - State Office

Enclosure

April 8, 1991

RE: Application for Transfer No. 34-7080A/34-7136/34-7169
TODD PERKES/JUEL AIKELE

Mr. Roger D. Ling
Attorney at Law
P.O. Box 396
Rupert, ID 83350

Dear Mr. Ling:

This letter acknowledges receipt of the protest filed in behalf of the Big Lost River Irrigation District against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?

2. Does the change constitute an enlargement in the use of the original rights?

3. Will the proposed use under these transfers conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing. We appreciate your support in this matter.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

April 3, 1991

RE: Application for Transfer No. 34-7080A/34-7136/34-7169

M. Todd Perkes/Juel Aikele
c/o Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

Gentlemen:

Enclosed please find copies of protests filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed use under this transfer conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the three items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

April 3, 1991

RE: Application for Transfer No. 347080A/34-7136/34-7169
TODD PERKES/JUEL AIKELE

Lawrence Babcock
Box 66
Moore, ID 83255

Dear Mr. Babcock:

On March 25, 1991, signed petitions protesting the above referenced water right transfer were received by this Department. You have been selected to represent the individuals on these petitions. Therefore, any correspondence concerning this application will be directed to you. We are asking that you keep these individuals notified of any proceedings concerning this transfer. For your convenience, I have enclosed copies of the petitions submitted.

This letter also acknowledges receipt of the protest filed against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?

2. Does the change constitute an enlargement in the use of the original rights?

3. Will the proposed use under these transfers conflict with the local public interest?

The protestants must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

We appreciate your support in this matter. If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

27-Feb-1991

KENT FOSTER ESQ
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

RE: Application No. 34-7080A, 34-7136, & 34-7169

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the Arco Advertiser and Statewide on March 7 & 14, 1991 . The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

26-Feb-1991

IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before March 25, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

26-Feb-1991

LEWISTON MORNING TRIBUNE
PO BOX 957
LEWISTON ID 83501

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before March 25, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

26-Feb-1991

THE TIMES NEWS
PO BOX 548
TWIN FALLS ID 83303

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before March 25, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

26-Feb-1991

ARCO ADVERTISER
PO DRAWER C
ARCO ID 83213

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before March 25, 1991.

Yours truly,

Rita Bodell
Secretary/Office Coordinator

Encl.

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT
NO.'S 34-7080A, 34-7136, & 34-7169

NOTICE IS HEREBY GIVEN that M. Todd Perkes & Juel Aikele have applied to the Department of Water Resources to change point of diversion and place of use of the waters of a groundwater source. The rights sought to be changed are evidenced by licenses and recorded as follows:

LICENSE NO. 34-7080A AMOUNT: 2.67 cfs
PRIORITY: 9-23-1974
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NE, SEC. 11, T 3N, R 25E, B.M.

LICENSE NO. 34-7136 AMOUNT: 5.5 cfs
PRIORITY: 3-26-1976
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the NW, SEC. 11, T 3N, R 25E, B.M.

LICENSE NO. 34-7169 AMOUNT: 4.48 cfs
PRIORITY: 1-6-1977
POINT(S) OF DIVERSION: SWNW, SENW, SEC. 5, T 3N, R 25E, BUTTE COUNTY
The water is used from 4-1 to 11-1 to irrigate 160 acres within the SE, SEC. 11, T 3N, R 25E, B.M.

These rights when combined shall not exceed 8.49 cfs at the point of rediversion.

TO BE CHANGED AS FOLLOWS:

The water will be diverted from the SENW, SEC. 5; SWSW, SEC. 21, T 4N, R 26E, BUTTE COUNTY, and used from 4-1 to 11-1 to irrigate 480 acres of land within the NE, SEC. 1, E1/2, E1/2W1/2, SEC. 13, T 3N, R 25E; W1/2, SE, SEC. 25, T 4N, R 25E; SWSW, SEC. 5, SEC. 6, W1/2N1/2, SENW, SEC. 7, T 3N, R 26E; W/12SW1/4, SEC. 29, E1/2SE1/4, SEC. 30, SEC. 31, T 4N, R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before March 25, 1991.

R. Keith Higginson
Director

Published in the [redacted] on MARCH 7 & 14, 1991.

Mr. Jones

This encloses a copy of the tax notices of Jul Aikes & Michael Aikes as well as the County deed transferring this property to Jul.

JUL 29 1992

Jul Aikes

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J HAHN
KENT W FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
MICHAEL D. CRAPO
GAYLE A SORENSON
DONALD L HARRIS
RANDALL B. REED
MARIE T FEELEY
JOHN G. SIMMONS
ROBERT M. FOLLETT

WEST ONE BANK BUILDING
P O BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W HOLDEN (1877-1967)
ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

February 4, 1991

RECEIVED
FEB 1 5 1991
Department of Water Resources
Eastern District Office

Mr. Juel Aikele
Route 1, Box 63-D
Moore, Idaho 83255

Dear Juel:

The Department of Water Resources has requested copies of tax notices on all of the land shown in our application for transfer. We have enclosed with this letter a map showing all of the lands included in the application. Would you please see if you can find tax notices for all of it and furnish them to us at your earliest convenience.

I suspect that some of the tax notices will be in Mike's or some else's name. We will also need copies of the recorded deeds showing that the transfers have been made to you.

As always, if we can answer any questions, please feel free to call upon us at your convenience.

Yours very truly,

Kent W. Foster

#3840.00/srs

Enclosure

MICROFILMED
JUL 2 9 1992

WARRANTY DEED

For Value Received

MICHAEL AIKELE and LORI L. AIKELE, Husband and Wife,

the grantors , do hereby grant, bargain, sell and convey unto

JUEL AIKELE and MARY ANNE AIKELE, Husband and Wife,

the grantees, the following described premises, in Butte County, Idaho, to-wit:

That certain land and that certain irrigation equipment on attached Exhibit "A",

Conveyance is subject to two certain Real Estate Mortgages given by Grantors herein, to Farm Credit Services (Federal Land Bank of Spokane) which Real Estate Mortgages were recorded on December 18, 1984, and May 17, 1988, as Instruments No. 15241 and 20958, respectively.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated:

Mike Aikele
MICHAEL AIKELE

Lori L. Aikele
LORI L. AIKELE

STATE OF Oregon County of Umatilla
On this 5th day of October, 1990 before me, a notary public in and for said State personally appeared

MICHAEL AIKELE and LORI L. AIKELE

known to me to be the persons whose name subscribed to the within instrument, and acknowledged to me that ~~executed the same~~.

Rhonda L. Labrock
NOTARY PUBLIC
Notary Public
Residing at Idaho
Comm. Expires My Commission Expires 8-24-92

STATE OF IDAHO, COUNTY OF
I hereby certify that this instrument was filed for record at the request of Juel Aikele

at 00 minutes past 2 o'clock P M., this 19 day of July, 19 90, in my office, and duly recorded in Book of Deeds at Page

Ex-Officio Recorder

By Mona James Deputy

Fees $ 12.00
Mail to:

JUL 29 1992

24453

TRACT I:

Township 4 North, Range 25 East of the Boise Meridian
Section 25: W½, EXCEPTING: Beginning at the Northeast corner of the NE¼NW¼ of said Section 25, thence South along the East boundary of said NE¼NW¼ 850 feet; thence Northwesterly to a point on the North boundary line of said NE¼NW¼ which is 850 feet West of the point of beginning; thence E. along said NE¼NW¼ North boundary 850 feet to the point of beginning.

Section 25: SE¼, EXCEPTING: Beginning at the Southeast corner of said Section 25, thence North 0°30'04" East along the East boundary of said Section 25, 205.17 feet; thence North 89°39'08" West parallel to the South boundary of said Section 25 529.88 feet; thence South 56°00'23" West 363.69 feet to the South boundary of said Section 25; thence South 89°39'08" East along the South boundary of said Section 25, 829.63 feet to the point of beginning. ALSO EXCEPTING: Beginning at the Northeast corner of the SE¼ of said Section 25, which is the true point of beginning, and running thence South 850 feet to a point; thence in a Northwesterly direction to a point 850 feet West of the true point of beginning, thence East 850 feet to the true point of beginning.

Section 26: SE¼

TRACT II:

Township 3 North, Range 25 East of the Boise Meridian
Section 1: Lots 1 and 2; S½NE¼, EXCEPTING THEREFROM: an easement 30 feet in width adjacent to and North of the centerline of said Section 1, and running from the W½ of said Section 1 to the County Road along the East line of said Section.

TRACT III:

A parcel of land in the NE¼NW¼ of Section 25, Township 4 North, Range 25 East of the Boise Meridian, described as
The Southwesterly boundary of such parcel is a straight line, drawn from a point 850 feet South of the Northeast corner of said NE¼NW¼ to a point 850 feet West of said Northeast corner; the Northeasterly boundary of such parcel is an arc, which intersects said straight line at each point of curve, with a radius of 1300 feet, center of circle at the center of the said NW¼.

TRACT IV:

A portion of the NW¼ of Section 8, Township 4 North, Range 26 East of the Boise Meridian, described as
Beginning at the Northeast corner of the NW¼NW¼ of said Section 8, thence South 75 feet; thence West 75 feet; thence North 75 feet; thence East 75 feet to the point of beginning.

Together with an undivided 50% interest in a 250 HP G.E. electric motor and a Johnston turbinepump and 425 feet, more or less, of steel mainline located off the above described land in the E½NW¼ of Section 5, Township 4 North, Range 26 East of the Boise Meridian, and any replacements thereof, all of which are hereby declared to be appurtenant thereto.

Together with a 250 HP G.E. electric motor, with an Aurora turbine pump, a 75 HP U.S. electric motor, with a Layne and Bowler turbine pump, a 40 HP U.S. electric motor, with a Verti-Line turbine pump, a 40 HP U.S. electric motor with a Verti-Line turbine pump, a 100 HP G.E. electric motor, with a Wintroath turbine pump, a 125 HP G.E. electric motor with a Layne and Bowler turbine pump, and 1,300 feet of size 14 inch steel mainline and 800 feet of size 12 inch steel mainline, 5,800 feet of sizes 6 inch through 12 inch steel mainline, 1,900 feet of sizes 8 inch through 10 inch steel mainline, and (3) Mel Brown electric self-propelled, 14-tower, 1,300 foot length circular systems, and a Mel Brown electric self-propelled, 14-tower 1,300 foot length circular system, and any replacements thereof, all of which are hereby declared to be appurtenant thereto.

MICROFILMED
JUL 29 1992

PARCEL III

That portion of the Northwest Quarter and the West 450 feet of the Northeast Quarter of said Section which is not irrigated by a certain 11 Tower, 1560 feet Wade Rain Center Pivot sprinkler system, being in the Northeast Corner of such Northwest Quarter and the adjacent West 450 feet of the Northeast Quarter.

PARCEL IV

That portion of the Northwest Quarter and the West 450 feet of the Northeast Quarter of said Section which is not irrigated by a certain 11 Tower, 1560 feet Wade Rain Center Pivot sprinkler system, being in the Southeast Corner of said Northwest Quarter and adjacent West 450 feet of the Northeast Quarter.

MICR
JUL 29

Tract V:

Township 3 North, Range 26 East, Boise Meridian

Section 5: $SW\frac{1}{4}SW\frac{1}{4}$

Section 6: $S\frac{1}{2}S\frac{1}{2}$,

Excepting therefrom the following Parcels of Property:

Parcel One: That parcel of property heretofore conveyed by Grantors to DON AIKELE, et. ux., and have particularly described as follows:

> A Parcel of land in Section 6, Township 3 North, Range 26 East, Boise Meridian, Being that portion of the Southwest Quarter and the West 450 feet of the Southeast Quarter of Said Section, which is irrigated by a certain 11 Tower, 1560 foot Wade Rain Center Pivot irrigation system.

Parcel Two: A Parcel of land in Sections 5 and 6, Township 3 North, Range 26 East of the Boise Meridian;

Being that portion of the South one-half of the $SE\frac{1}{4}$, Section 6 and that portion of the $SW\frac{1}{4}SW\frac{1}{4}$, Section 5 which are irrigated by a certain 11 Tower; 1560 foot Wade Rain Center Pivot Irrigation system, which pivot has its center point in the $NE\frac{1}{4}$, Section 7, said center point being located approximately 1120 feet South and 520 feet West of the SE Corner of Section 6.

Tract VI:

Township 3 North, Range 26 East =, Boise Meridian:

Section 7: The following 6 parcels of Land:

A Parcel of land in Sections 5 and 6, Township 3 North, Range 26 East of the Boise Meridian;

Being that portion of the South one-half of the $SE\frac{1}{4}$, Section 6 and that portion of the $SW\frac{1}{4}SW\frac{1}{4}$, Section 5 which are irrigated by a certain 11 Tower; 1560 foot Wade Rain Center Pivot Irrigation system, which pivot has its center point in the $NE\frac{1}{4}$, Section 7, said center point being located approximately 1120 feet South and 520 feet West of the SE Corner of Section 6.

Tract V:

Four Parcels of land in Section 7, Township 3 North, Range 26 East of the Boise Meridian being:

PARCEL I

That portion of the Northwest Quarter of said Section which is not irrigated by a certain 11 Tower. 1560 feet Wade Rain Center Pivot sprinkler system, being in the Northwest Corner of such Northwest Quarter,

PARCEL II

That portion of the Northwest Quarter of said Section which is not irrigated by a certain 11 Tower, 1560 feet Wade Rain Center Pivot sprinkler system, being in the Southwest Corner of such Northwest Quarter.

MICROFILMED
JUL 29 1992

AFFIDAVIT OF LOAN RESTRUCTURE
AND EXTENSION OF MATURITY DATE

FCB Loan No. 11142-301

The undersigned do hereby depose and state:

1. Juel Aikele and Mary Anne Aikele, husband and wife, are mortgagors, and Farm Credit Bank of Spokane, successor by merger to The Federal Land Bank of Spokane, is mortgagee, under the following described mortgage(s):

That certain mortgage dated November 29, 1984, and recorded December 18, 1984, as Instrument No. 15241, Real Property Records of Butte County, Idaho;

That certain mortgage dated December 18, 1990, recorded 12-19-, 1990, as Instrument No. 24453, Real Property Records of Butte County, Idaho.

Said mortgage(s) contains a description of the real property affected by the restructure agreement referenced herein. A copy of said real property description(s) is attached hereto and incorporated herein.

2. The debt and some terms and conditions secured by said mortgage have been restructured and reamortized, and the term extended to December 1, 2008, all as fully set forth in the Restructuring Agreement. The agreement also provides that the interest rate, payment terms or balance due on the debt may be indexed, adjusted, renewed or renegotiated by agreement of the parties.

IN WITNESS WHEREOF, the undersigned have executed this Affidavit and Memorandum on the dates set opposite the signatures hereto.

FARM CREDIT BANK OF SPOKANE
P.O. Box TAF-C5 / West 601 First Avenue
Spokane, Washington 99220-4005

By: Brad Buttars Date: December 18, 1990
Authorized Agent

BORROWERS

Juel Aikele Date: Dec 18, 1990
Juel Aikele

Mary Anne Aikele Date: 18 Dec 1990
Mary Anne Aikele

Mailing Address: Route 1 Box 63-D
Moore ID 83255

No. 24454
FILED
DEC 19 1990
A.M. 2 23 P.M.
BUTTE COUNTY RECORDER
Mona Jamieson
DEC 29 1992
MICROFILMED
COPY

STATE OF IDAHO)
) ss.
County of Bonneville)

On this 18th day of December, 1990, before me personally appeared JUEL AIKELE and MARY ANNE AIKELE, husband and wife, to me known to be the persons described in and who executed the within instrument, and acknowledged that they executed the same as their free act and deed.

BONNIE J. RUGER NOTARY PUBLIC STATE OF IDAHO

Bonnie J. Ruger
Notary Public for the State of Idaho
Residing at Blackfoot, Id.
My commission expires 9-1991

STATE OF IDAHO)
) ss.
County of Bonneville)

On this 18th day of December, 1990, before me personally appeared Brad Buttars known to me to be an authorized agent of the Farm Credit Bank of Spokane that executed the within instrument, and acknowledged to me that such corporation executed the same as its free act and deed; and on oath stated that he was authorized to execute said instrument.

BONNIE J. RUGER NOTARY PUBLIC STATE OF IDAHO

Bonnie J. Ruger
Notary Public for the State of Idaho
residing at Blackfoot, Id.
My commission expires 9-1991

COPY
RECORDED FILMED
JUL 29 1992

CONSOLIDATED TAX NOTICE AND RECEIPT

BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(206) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
159223	5-00	RP04N25E251202A	1938

W2 LESS T#33-82;
SE4 LESS T#23-84 & T#24-84
L 159223 SEC 25

WAC 2.000

458.000 TOT ACRES

AIKELE, MICHAEL
& AIKELE, LORI

DELINQUENT CERT

RT 1 BOX 63C-2
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	703.30
SCHOOL 4111	.006504	1,035.60
CEMETERY	.000180	28.66
LIBRARY	.000583	92.84
HOSP DIST	.001275	203.02
TOTAL	.012959	2,063.42

RECEIPT

FULL PAYMENT
TAX 2,063.42
PEN
SUB TOT
INT
TOT

1ST INSTALLMENT
TAX 1,031.71
PEN
SUB TOT
INT
TOT

2ND INSTALLMENT
TAX 1,031.71
PEN
SUB TOT
INT
TOT

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT

COPY THANK YOU *COPY*

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP04N25E251202A
AIKELE, MICHAEL
& AIKELE, LORI
1938
COPY

SPECIAL CODE	TAX	CODE AREA TAX	2ND INSTALLMENT
		1,031.71	1,031.71
			PEN
			SUB TOT
			INT
			TOT

5-00

2nd

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO

BUTTE COUNTY TAX COLLECTOR
P.O. BOX 121, ARCO, ID 83213

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991
DATE PAID
PAID BY
CHECK #
CASH

RECEIVED JUL 29 1992

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP04N25E251202A
AIKELE, MICHAEL
& AIKELE, LORI
1938
COPY

SPECIAL CODE	TAX	CODE AREA TAX	TOTAL TAX
		2,063.42	2,063.42
			PEN
			SUB TOT
			INT
			TOT

5-00

FULL

SPECIAL CODE	TAX	CODE AREA TAX	1ST INSTALLMENT
		1,031.71	1,031.71
			PEN
			SUB TOT
			INT
			TOT 1,031.71

5-00

1st

DELINQUENT IF NOT PAID ON OR BEFORE DECEMBER 20, 1990
DATE PAID 12-20-90
PAID BY M Aikele
CHECK #2331
CASH

TXNT 2A 90-(4)

MICROFILMED
JUL 29 1992

CONSOLIDATED TAX NOTICE AND RECEIPT

BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
48778	5-00	RP03N25E010101A	1500

LOTS 1-2
S2NE4
L 48778 SEC 01

WAC 1.300

158.530 AIKELE, MICHAEL
TOT ACRES & AIKELE, LORI

DELINQUENT CERT

RT 1 BOX 63C-2
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	215.46
SCHOOL #111	.006504	317.26
CEMETERY	.000180	8.78
LIBRARY	.000583	28.44
HOSP DIST	.001275	62.20
TOTAL	.012959	632.14

RECEIPT

FULL PAYMENT
TAX 632.14
PEN
SUB TOT
INT
TOT

1ST INSTALLMENT
TAX 316.07
PEN
SUB TOT
INT
TOT

2ND INSTALLMENT
TAX 316.07
PEN
SUB TOT
INT
TOT

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT

COPY THANK YOU *COPY*

COPY

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP03N25E010101A
AIKELE, MICHAEL
& AIKELE, LORI
1500
COPY

SPECIAL CODE	TAX	CODE AREA TAX	2ND INSTALLMENT
		316.07	316.07
			PEN
			SUB TOT
			INT
			TOT

5-00

2nd

PERSONAL CHECKS SUBJECT TO BANK CLEARANCE
MAKE CHECKS PAYABLE TO

BUTTE COUNTY TAX COLLECTOR
P.O. BOX 121, ARCO, ID 83213

DELINQUENT IF NOT PAID ON OR BEFORE JUNE 20, 1991
DATE PAID CHECK #
PAID BY CASH

FOR PROPER CREDIT THIS STUB MUST BE RETURNED WITH YOUR PAYMENT

REAL PROPERTY 1990 RP03N25E010101A
AIKELE, MICHAEL
& AIKELE, LORI
1500
COPY

SPECIAL CODE	TAX	CODE AREA TAX	TOTAL TAX
		632.14	632.14
			PEN
			SUB TOT
			INT
			TOT

5-00

FULL

SPECIAL CODE	TAX	CODE AREA TAX	1ST INSTALLMENT
		316.07	316.07
			PEN
			SUB TOT
			INT
			TOT 316.07

5-00

1st

DELINQUENT IF NOT PAID ON OR BEFORE DECEMBER 20, 1990
DATE PAID 12 20 90
PAID BY M Aikele
CHECK #2331
CASH

TXNT 2A 90-(4)

P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
15503	4-00	RP04N26-2940004	2219

FR NW4SW4 T# 10-65 (27A)
FR SW4NW4 T# 7-65 (5A)
L 15503 W2SW4SW4; N2NW4NE4SW4SW4
PAT # 11-81-0004
SEC 29

63.250 AIKELE, JUEL A
TOT ACRES

DELINQUENT CERT

RT. 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	68.68
SCHOOL #111	.006504	100.94
CEMETERY	.000130	2.02
FIRE	.000407	6.32
LIBRARY	.000583	9.04
HOSP DIST	.001275	19.76
TOTAL	.013366	207.26

RECEIPT	
	FULL PAYMENT
TAX	207.26
PEN	
SUB TOT	
INT	
TOT	
	1ST INSTALLMENT
TAX	103.63
PEN	
SUB TOT	
INT	
TOT	
	2ND INSTALLMENT
TAX	103.63
PEN	
SUB TOT	
INT	
TOT	

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
414747	4-00	RP04N26E310100A	2223

HM- 42470
372277* 1/2 T# 23-72
L 199677 FR SEC 31 T# 49-77
I 215070 SEC 31

WAC 6.200

506.620 AIKELE, JUEL
TOT ACRES & AIKELE, MARY ANNE

DELINQUENT CERT

RT. 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	1,644.36
SCHOOL #111	.006504	2,421.30
CEMETERY	.000130	97.02
FIRE	.000407	151.52
LIBRARY	.000583	217.04
HOSP DIST	.001275	474.66
SOLID WASTE FEE		30.00
TOTAL	.013366	5,005.90

RECEIPT	
	FULL PAYMENT
TAX	5,005.90
PEN	
SUB TOT	
INT	
TOT	
	1ST INSTALLMENT
TAX	2,502.95
PEN	
SUB TOT	
INT	
TOT	
	2ND INSTALLMENT
TAX	2,502.95
PEN	
SUB TOT	
INT	
TOT	

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
43823	4-00	RP04N26E310002A	2227

FR NE4 T#6-64
SEC 31
L 43823

WAC 2.000

115.020 AIKELE, JUEL
TOT ACRES

DELINQUENT CERT

RT. 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	193.58
SCHOOL #111	.006504	285.02
CEMETERY	.000130	7.93
FIRE	.000407	17.84
LIBRARY	.000583	25.56
HOSP DIST	.001275	55.88
TOTAL	.013366	585.78

RECEIPT	
	FULL PAYMENT
TAX	585.78
PEN	
SUB TOT	
INT	
TOT	
	1ST INSTALLMENT
TAX	292.89
PEN	
SUB TOT	
INT	
TOT	
	2ND INSTALLMENT
TAX	292.89
PEN	
SUB TOT	
INT	
TOT	

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
33642	4-00	RP04N26E302393A	2224

FR SE4NE4 T#13-62
E2SE4
L 33642 SEC 30

WAC 3.700

88.300 AIKELE, JUEL
TOT ACRES & AIKELE, MARY ANNE

DELINQUENT CERT

RT 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	148.60
SCHOOL #111	.006504	218.02
CEMETERY	.000130	6.06
FIRE	.000407	13.70
LIBRARY	.000583	19.62
HOSP DIST	.001275	42.90
TOTAL	.013356	449.70

RECEIPT	
	FULL PAYMENT
TAX	449.70
PEN	
SUB TOT	
INT	
TOT	
	1ST INSTALLMENT
TAX	224.85
PEN	
SUB TOT	
INT	
TOT	
	2ND INSTALLMENT
TAX	224.85
PEN	
SUB TOT	
INT	
TOT	

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI [redacted] 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
3370	4-00	RP04N26 [illegible]	[illegible]

FR SW4SE4 T& 16-27
SEC 17
L 3370

2.250 AIKELE, JUEL
TOT ACRES
DELINQUENT CERT

RT. 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	14.91
SCHOOL #111	.006504	21.92
CEMETERY	.000140	.47
FIRE	.000407	1.37
LIBRARY	.000533	1.80
HOSP DIST	.001275	4.30
TOTAL	.013366	45.08

RECEIPT
FULL PAYMENT
TAX 45.08
PEN
SUB TOT
INT
TOT
1ST INSTALLMENT
TAX 22.54
PEN
SUB TOT
INT
TOT
2ND INSTALLMENT
TAX 22.54
PEN
SUB TOT
INT
TOT

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
159602	4-00	RP03N26E06120DA	1644

S2N2; N2S2
SEC 6
L 159602

WAC 2.700

317.300 AIKELE, JUEL
TOT ACRES & AIKELE, MARY ANNE
DELINQUENT CERT

RT. 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	704.96
SCHOOL #111	.006504	1,038.06
CEMETERY	.000140	22.34
FIRE	.000407	64.96
LIBRARY	.000533	85.06
HOSP DIST	.001275	203.50
TOTAL	.013366	2,133.28

RECEIPT
FULL PAYMENT
TAX 2,133.28
PEN
SUB TOT
INT
TOT
1ST INSTALLMENT
TAX 1,066.64
PEN
SUB TOT
INT
TOT
2ND INSTALLMENT
TAX 1,066.64
PEN
SUB TOT
INT
TOT

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
79876	4-00	RP03N26E060100A	1643

LOTS 1-4 INC (N2N2)
SEC 6
L 79876

WAC 2.200

158.800 AIKELE, JUEL
TOT ACRES
DELINQUENT CERT

RT. 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	352.82
SCHOOL #111	.006504	519.52
CEMETERY	.000150	14.38
FIRE	.000407	32.52
LIBRARY	.000533	46.58
HOSP DIST	.001275	101.34
TOTAL	.013366	1,067.66

RECEIPT
FULL PAYMENT
TAX 1,067.66
PEN
SUB TOT
INT
TOT
1ST INSTALLMENT
TAX 533.83
PEN
SUB TOT
INT
TOT
2ND INSTALLMENT
TAX 533.83
PEN
SUB TOT
INT
TOT

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU

CONSOLIDATED TAX NOTICE AND RECEIPT
BUTTE COUNTY TREASURER, LORI BECK 1990
P.O. BOX 121, ARCO, ID. 83213
(208) 527-3047 REAL PROPERTY

MARKET VALUE	TAX CODE AREA	PARCEL NUMBER	BILL NUMBER
112386	5-00	RP03N25E130002A	1532

E2 LESS T476-77; E2N2
SEC 13
L 112386

WAC 5.000

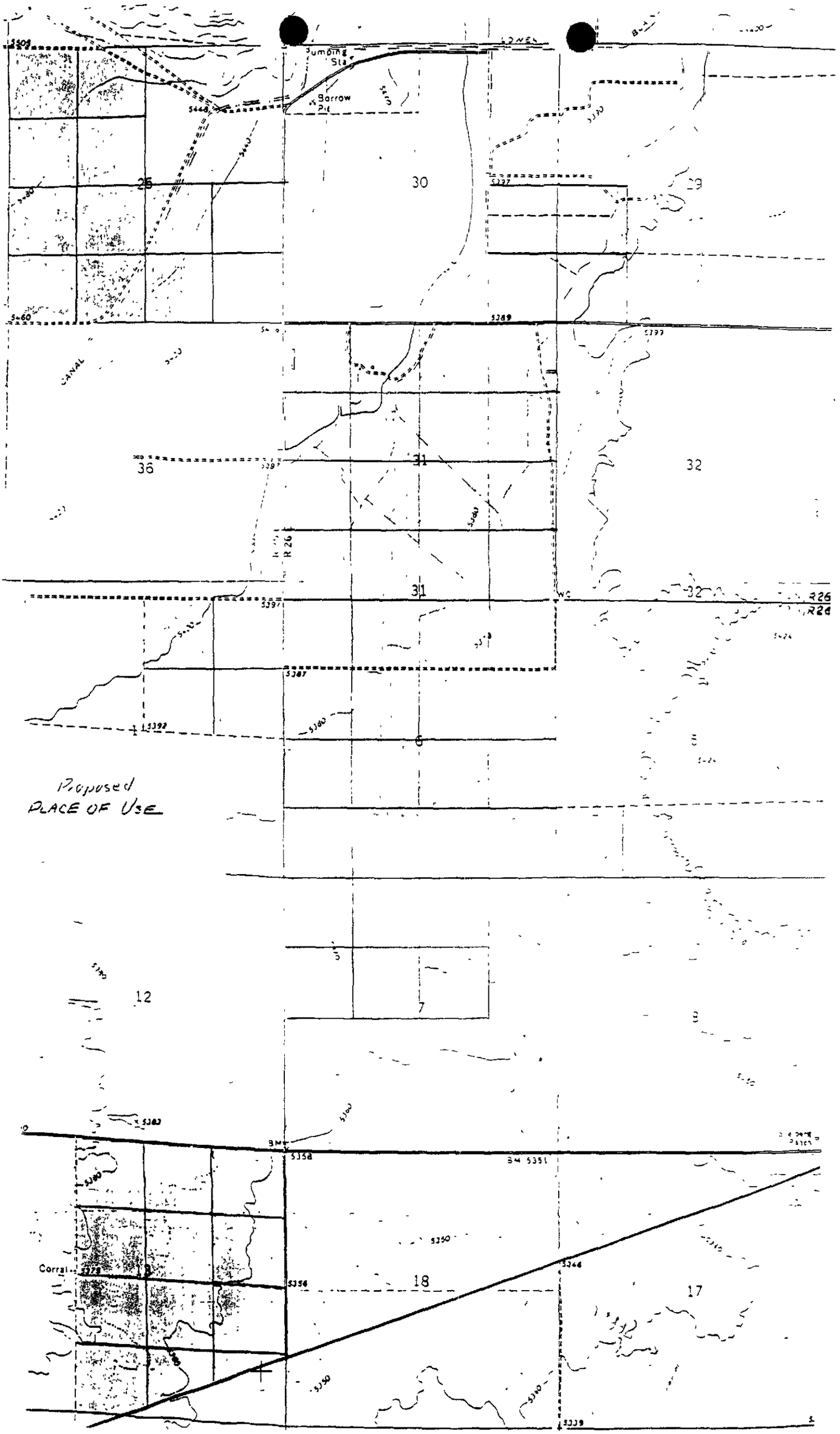
426.260 AIKELE, JUEL
TOT ACRES & AIKELE, MARY ANNE
DELINQUENT CERT

RT. 1 BOX 63-D
MOORE, ID 83255

TAXING DISTRICT	RATE	AMOUNT
STATE		
COUNTY	.004417	496.42
SCHOOL #111	.006504	730.96
CEMETERY	.000180	20.24
LIBRARY	.000583	65.53
HOSP DIST	.001275	143.30
TOTAL	.012959	1,456.44

RECEIPT
FULL PAYMENT
TAX 1,456.44
PEN
SUB TOT
INT
TOT
1ST INSTALLMENT
TAX 728.22
PEN
SUB TOT
INT
TOT
2ND INSTALLMENT
TAX 728.22
PEN
SUB TOT
INT
TOT

WHEN MAILING YOUR CANCELLED CHECK WILL BE RECEIPT
THANK YOU


Pumping Sta
Borrow Pit
30
29
25
36
31
32
R 26
R 25
31
32
R 26
R 24
6
Proposed
PLACE OF USE
12
7
8
BM 5358
BM 5351
Corral
18
17

INT DEPARTMENT MEMO — 1

FROM KEITH C. WILSON - EASTERN

DATE 19 Feb 1991

TO Transfer file 34-7080A / 7136 / 7169

SUBJECT Overlap Review

P/D in Sec 5, T4N, R26E - No water Rights with this P/D

P/D in Sec 21, T4N, R26E - Application for Permit 34-7296

Transfer appears to spread water rights for 480 acres over at least 2244 acres; Therefore, this is an expansion!

MICROFILMED

JUL 2 9 1992

Keith C Wilson

SIGNATURE

2. Describe the reason for the proposed changes Present place of use [illegible]

aside program; pending application for permit of Aikele for portion of place of use is involved in litigation. This will provide a method for legal division of one Aikele well and additional water for other places of use which are short of water because of drouth

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use		
34-7080A	09/23/1974	2.67 cfs	Irrigation	April 1	to	Nov. 1
34-7136	03/26/1976	5.50 cfs	Irrigation	April 1	to	Nov. 1
34-7169	01/06/1977	4.48 cfs	Irrigation	April 1	to	Nov. 1
					to	

2. Total amount of water being transferred 12.65 (But see conditions in licenses) cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion.

Lot	¼	¼	¼	Sec	Twp.	Rge.	County	Local name for diversion
		SW	SW	21	4N	26E	Butte	Aikele Well
		SE	NW	5	4N	26E	Butte	Perkes Well

5. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
3N	25E	1	33 6.9	33 6.9	33 6.9	33 6.9													27.6
		13	4.2	6.3	7.4	8.4	6.3			6.3	7.8			3.8	8.2	8.4	4.8	1.1	73.0
4N	25E	25					33 6.9	37 6.9	33 6.9	40 8.4	40 8.4	33 6.9	33 6.9	33 6.9	33 6.9	40 8.4	33 6.9	33 6.9	87.3
3N	26E	5											3.5						3.5
		6	40 8.4	40 8.4	8.4	8.4	40 8.4	39 8.4	8.4	8.4	8.4	8.4	7.3	6.1	8.4	8.4	8.1	5.5	127.8
		7		1.4	4.3			1.0	2.7	.6									10.0
4N	26E	29										40/35 7.2	8 2.2						9.4
		30													40 8.2		2	8.2	~~8.2~~ 16.4
		31	40 7.1	37/3 7.3	28/3 8.2	40 8.2	28 5.7	31 6.9	39 8.2	38 7.8	40 8.2	39 8.2	39 8.2	40 8.2	S/33 8.4	27/13 8.2	40 8.2	40 8.2	125.0

Total acres 480.0

* water Rights associated w/ ¼-¼ acre-tract

on by APPLICATIONS ASSOCIATED w/ ¼-¼

Appears to spread W.R. to 480 acre over at least 224 4acres

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	TOTALS	
3N	25E	1	6.9	6.9	6.9	6.9														
	34-7122		33	33	33	33														GW
	7430		40	40	40	40														Big Lost/Antelope Ck
		13	4.2	6.3	7.4	8.4	6.7			6.7	7.8			3.8	8.2	8.4	4.8	11		
	7480				20					20	37			15	40	40	29	5		GW
3N	26E	5											3.5							GW
	7296												40							Groundwater
	7456												2							
	7457												2							
	7487												2							Big Lost
		6	84	84	84	84	84	84	84	84	84	84	75	61	84	84	81	55		Groundwater
	2315		40	40			40													
	7244		40	40	40	40	40	40	40	40										
	7246				40	40			40	40	40	40			40	40				
	7296				40	40			40	40	40	40	40	40	40	40	40	40		
	2472							39												
	7455								40	40		40								
	7482												5	10						
	7456																2	14		waste-water
	7457																2	14		
	7487																2	14		Big Lost

Total number of acres irrigated _____

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE¼ NE¼	NE¼ NW¼	NE¼ SW¼	NE¼ SE¼	NW¼ NE¼	NW¼ NW¼	NW¼ SW¼	NW¼ SE¼	SW¼ NE¼	SW¼ NW¼	SW¼ SW¼	SW¼ SE¼	SE¼ NE¼	SE¼ NW¼	SE¼ SW¼	SE¼ SE¼	TOTALS	
3N	26E	7		1.44	3			1	27	.6										
	7456			26	17															WASTEWATER
	7457			26	17															GW
	7482			11	5			37	32	35										GW
	7487			26	17															Big Lost
4N	25E	25					6.9	6.9	6.9	8.4	8.4	6.7	6.7	6.9	6.9	8.4	6.9	6.9		
	7035						33	33	33	40	41	33	33	33	33	40	33	33		GW
	7526						0								←					Ba N Ba Inc GW
	7430							40	40	40	40	40	40	40	40	40	40	40		Big Lost/Interlake GW
	4085										1	3								MAGSTAR GW
	4086												5							MAGSTAR GW
4N	26	29										7	22							
	2272											35								waste water
	2308											40								Waste water
	2309											40								GW
	2358A											35	8							GW
		30													12					
	2272														40					Waste water
	2308														40					Waste water
	2358A														40					GW

Total number of acres irrigated _____

LAND LIST ATTACHMENT

Description and location of place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
4N	26E	31	7.1	7.3	8.2	8.2	5.7	6.9	8.2	7.8	8.2	8.2	1.2	8.2	8.2	8.2	8.2	8.2	
	2429B		40	3	3	40									33	2			GW
	2358A			37	38											13			GW
	7244			37	37		40	40	40	40	40	40							GW
	2472						28	31	39	38	40	39	39						GW
	7516											5							LDS Church GW
	2315													40	5	27	40	40	GW

Total number of acres irrigated _____

LAW OFFICES
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ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

R VERN KIDWELL OF COUNSEL

February 6, 1991

Norm C. Young, Administrator
Water Management Division
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Application for Transfer of Rights Nos. 34-7080A, 34-7136 and 34-7169

Dear Norm:

We appreciate your letter of January 31, 1991, and want to respond in as cooperative a way as possible. We certainly do not claim any monopoly on bright ideas and will appreciate any assistance.

We think the land owned by Juel Aikele in the S1/2 of the SW1/4 of Section 6, Township 3 North, Range 26 East, is now exactly the same as the rest of the lands owned by Juel in that section and Sections 5, 7, and 13 of the same township and range and Sections 29, 30, and 31 of Township 4 North, Range 26 East, so far as the water rights which are claimed to be appurtenant thereto. It is true that with respect to some of the claimed rights, there is an alleged expansion under Idaho Code §42-1416, or an accomplished transfer under §42-1416A. What we have been trying to accomplish is to make the documents reflect, as nearly as possible, what has been occurring in actual practice for many years. Regardless of where the water is diverted, it is all placed in a ditch system, where we assume it commingles on its way to the various pumps which pressure the sprinkling systems, or to the cuts where the water then flows onto the crop lands. I do not believe the water that irrigates the S1/2 of the SW1/4

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JUL 29 1992

of Section 6, can be distinguished from any of the other water that is carried in the same ditch to irrigate any of the rest of Juel's property.

In the past four years, the total amounts diverted under the combination of all of the rights have diminished; we think because of the drouth. This is as true of the right based upon expansion as it is of the rest of the rights. The need to operate the well in Section 21, Township 4 North, Range 26 East, is even more crucial to the preservation of the farmland now than it was a few years ago. The lands in Section 1 of Township 3 North, Range 25 East, and Section 25 of Township 4 North, Range 25 East, formerly owned by Mike Aikele and dependent upon Water Rights Nos. 34-7035 and 34-7122 for irrigation, are experiencing the same problem. The diversions under these two rights have also diminished and hence the need for additional water which is proposed to be supplied from the one Perkes well in Section 5 of Township 4 North, Range 26 East.

There is no proposal to enlarge, deepen or replace any well at this time. The proposal is to divert up to 12.43 cfs of water under the three Perkes rights from two wells, 8.43 cfs from the Aikele well in Section 21, and 4.0 cfs from the one Perkes well in Section 5, both in Township 4 North, Range 26 East.

The water from each well will be placed in a nearby ditch where it will commingle with water diverted under other rights before it reaches the various places of use. Proportionately the water will not be used to irrigate more than 480 acres, but to attempt to select a particular 480 acres as the transferred place of use would not be honest because it is not feasible to deliver the water to any specific 480 acres.

Last year, we were requested to select a specific 480 acres and, of course, we will try to comply with your requests again this year. I must admit that I cannot comprehend how a transfer in which water diverted under one right is commingled with water diverted under other rights, but where the total acreage irrigated does not exceed the combined totals of the places of use of all such rights, can constitute an enlargement. If you add the places of use to which all of the relevant water rights of Juel Aikele are appurtenant, the total seems to be 2,284.3 (549 on the former lands of Mike's in Sections 1 and 25, and

JUL 29 199

1,735.3 on the other lands that Juel has operated). Todd Perkes' three rights are appurtenant to an additional 480 acres. This proposal results in the irrigation of a total of 2,284.3 acres. It seems to us that it would not constitute an expansion or an enlargement under any theory unless the combined total of acres exceeded 2,764.3 acres (2,284.3 plus 480).

As we say, we are anxious to have the application approved, and in time for this irrigation season. We are certainly open to better ideas and would welcome your suggestions. Last year, we listed the entire acreage where the water diverted under these three rights was to be used with the commingled water diverted under the other rights, but Harold or someone insisted we pick some particular 480 acres. This year, I reasoned that since the water diverted under these rights will in fact supply an undivided portion of the supply to every acre, we would list an undivided 480-acre portion of all of the land to be irrigated.

It is not proposed to divert more water than the three rights allow, but it is not feasible to somehow separate this water from the water diverted under the other rights and use this water exclusively on a specific 480 and the other water exclusively on the rest. We have never understood the law to require such a thing.

I also must confess that I do not know what a "permanent" transfer is. We suppose that this transfer is intended to be permanent until such time as circumstances either permit or dictate some change; at which time, we think the law contemplates another application for transfer. I do not see anything in the statute that defines a permanent or temporary transfer or which limits the number of times an application for transfer of any particular right may be filed. Maybe all transfers are permanent until such time as a new transfer is approved or maybe they are all temporary because none of them last forever. If we could accurately predict the future, we could of course provide an exact time frame. As between the parties to the lease, the best we have been able to do is to provide a means for renewal and for termination upon certain conditions. If the lease is renewed, then there is no need for a further transfer. If the lease is terminated, the parties have agreed to cooperate in any other transfer the lessor wishes to propose. Both the lessor and the lessee are subject to the

JUL 29 1992

risks imposed by the law and there is a provision for how that risk is borne. We are not certain why anyone else needs to be very concerned about that contingency.

In any event, we will look forward to hearing from you further.

Yours very truly,

John J. Simmons for
Kent W. Foster

#3840.00/srs

cc: Mr. Juel Aikele

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JUL 29

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

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ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

February 1, 1991

Keith C. Wilson, Senior Resource Agent
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

RE: Transfer of Water Rights Nos. 34-7080A/7136/7169
for Juel Aikele and Todd Perkes

Dear Mr. Wilson:

We are returning the application with the following responses to your four comments:

1. There are no new wells proposed; the two in Section 5, Township 4 North, Range 26 East were drilled in about 1974 to 1976, and the one in Section 21, Township 4 North, Range 26 East was drilled in 1981. The well in Section 21 is a new point of diversion for some of the water under the three rights identified. It is identified in Part 1(B).4 but not as a new well because that would not be accurate.

2. Even though the map shows both the points of diversion in Section 5, only one is to be used; the one that has been circled. There is no pump in the other well in Section 5. The correct points of diversion; that is, SE1/4 of the NW1/4 of Section 5, Township 4 North, Range 26 East and the SW14/ of the SW1/4 of Section 21, Township 4 North, Range 26 East are included in Part 1(B).4. We have also made notations on the map in red ink to help clarify the matter.

3. Apparently, there was an omission of the 8.2 acres in the SE1/4 of the SE1/4 of Section 30, Township 4 North, Range 26 East and the total section acres should have been 16.4. These corrections have been made on the application forms.

JUL 29 1992

4. We have requested copies of the tax notices and they will be provided as soon as they arrive.

Yours very truly,

Kent W. Foster

#3840.00/srs

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 31, 1991

Kent Foster, Esq.
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, Idaho 83405

RE: Amended claims and application for transfer-- Aikeles and Perkes--#34-7080A, #34-7136, and #34-7169

Dear Kent:

The department has received a copy of the amended adjudication claims for Don Aikele, Juel Aikele, and Herman Aikele which you sent with your letter of January 15, 1991. The review of the claims has not been finalized; however, a preliminary review indicates that the land in the S1/2 SW1/4 of Section 6, T3N R26E BM is now claimed to be irrigated under "color of right" stemming from the amnesty and accomplished transfer provisions of Sections 42-1601 and 42-1601A Idaho Code. This makes transfer of another water right to the property unnecessary unless the "color of right" ultimately is not sufficient to allow IDWR to recommend the expanded or changed right to the court. For this reason, an extension of the approval of prior transfer No. 3675 involving the above referenced rights will not be needed at this time.

I am asking IDWR's Eastern region office to commence review of the new application for transfer involving the above referenced licenses and to begin the legal advertisements if it meets the usual requirements for completeness. However, I want to advise you before processing commences that the application as submitted gives some particular problems for receiving approval. It is difficult to find that an expansion of use will not occur on an application for transfer which moves the place of use to just a few acres in each of several 40 acre tracts. Special provisions would be needed to allow the water to be delivered to limited, scattered acreages. You will need to provide information to demonstrate that delivery of the right can be administered to avoid an expansion in use.

Also, the application appears to request a permanent change even though the water rights appear to have been obtained by temporary lease. Information will be needed on the contractual arrangement and the lender's concurrence with the transfer.

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JUL 29 1992

Other information may be found to be needed as processing continues.

In your letter you described that the output of several wells used by your clients has decreased over the rate which has been available in the past. If enlargement, deepening or replacement of these wells is contemplated, an application for drilling permit needs to be filed and approved prior to starting the work.

Sincerely,

Norman C Young

NORMAN C. YOUNG
Administrator
Water Management Division

cc: Eastern Region, IDWR
Adjudication Bureau

JUL 19 1991

LAW OFFICES
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ARTHUR W HOLDEN (1877-1967)
ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

January 15, 1991

RECEIVED
JAN 17 1991
Department of Water Resources

Norm C. Young, Administrator
Resources Administration Division
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Dear Mr. Young:

We have recently prepared and filed a number of documents with IDWR regarding water rights for lands owned by Juel, Don and Herman Aikele. Copies of the documents as filed are enclosed with this letter for your information, and this letter is written as an explanation so you will understand how we think they all relate.

You will recall that one of the reasons no water rights were claimed on the S1/2 of the S1/2 of Section 6, Township 3 North, Range 26 East, and the SW1/4 of the SW1/4 of Section 5 of the same township and range was because the record owner of this land was Mike Aikele and the status with respect to the mortgagee had never been settled. That has now been resolved with the mortgagee and Juel Aikele will take over Mike's interests in this land, as well as the land Mike formerly owned in Section 25 of Township 4 North, Range 25 East, and Section 1 of Township 3 North, Range 25 East.

Also, Quitclaim Deeds have now been exchanged between Mike and Don and between Mike and Herman and from Mike to Juel so that the land each is actually farming will also be titled in the correct name.

All of this permits us now to revise the SRBA claims to more accurately reflect actual practices over the past several years. We have enclosed a map which shows approximately how these irrigation practices have occurred for several years near the south portion of Section 6 and the north portion of Sections 7 and 8 in Township 3 North, Range 26 East. The land in yellow

JUL 29 1992

is that which has been irrigated by Mike and Juel with water under Juel's rights. The legal ownership of this land will now all be in Juel. The land in pink is that which has been irrigated by and is now owned by Don, and the land in blue is that which has been irrigated and is now owned by Herman.

We have also prepared and filed a new application for transfer of Water Rights Nos. 34-7080A, 34-7136, and 34-7169 of Todd Perkes. This new application also tries to take into account more nearly what occurred last year, and what is anticipated next year. As you know, many of the wells are not producing up to capacity. Juel's well in Section 21 of Township 4 North, Range 26 East pumped an average of about 8.5 cfs last summer instead of the 12.0 cfs it formerly did. Mike's wells (now Juel's) in Sections 5 and 8 of Township 4 North, Range 26 East which supply the land in Section 25 of Township 4 North, Range 25 East and Section 1 of Township 3 North, Range 25 East were also down by about 4.0 cfs and that is the reason the used pump had been installed in one of Todd's wells also in Section 5 of Township 4 North, Range 26 East. It is expected that operations in 1991 will need to be very similar so this application for transfer attempts to provide for this situation.

We have filed the application for transfer earlier this time and are hopeful that it can be processed in advance of the 1991 irrigation season.

If any of this is unclear, or if you have any suggestions, we would welcome your questions or comments.

Yours very truly,

Kent W. Foster

#3840.00/srs

Enclosure

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ARTHUR W HOLDEN (1877-1967)
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TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

January 15, 1991

Idaho Department of Water Resources
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

JA
Departm
Easter
Office

Gentlemen:

We are enclosing for filing and for processing a proposed Application for Transfer of Water Right on behalf of M. Todd Perkes and Juel Aikele. We have also enclosed a check in the amount of $50.00 for the filing fee.

Messrs. Perkes and Aikele are quite anxious that this application be processed with as much dispatch as possible. We will be happy to do anything we can to assist that effort if you will will let us know. Thank you for your kind attention to this matter.

Yours very truly,

Kent W. Foster

Kent W. Foster

#3840.00/srs

Enclosure

Eastern District Office
JUL 29 1992

Other information
(attachments to letter dated 1-15-91)
in file 34-7136

MICROFILMED
JUL 29 1992

2-4-91

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

October 22, 1990

Kent Foster
Holden, Kidwell, Hahn & Crapo
P. O. Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Re: Application for Transfer No. 3675 of Water Right Nos. 34-7080A, 34-7136 and 34-7169 in the names of M. Todd Perkes, Juel Aikele and Michael Aikele

Enclosed is a copy of the approved Application for Transfer of Water Right Nos. 34-7080A, 34-7136 and 34-7169 along with a copy of the Memorandum Decision and Order Approving Transfer No. 3675 and Denying Attorney's Fees.

Any person who does not agree with the decision of the department may request a rehearing before the Director within 20 days, or may appeal directly to the district court within 30 days of the date the decision is mailed.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosures

c w/enc.: M. Todd Perkes
Gary Slette
Lewis Rothwell
Juel and Michael Aikele
Lawrence Babcock

2-21-90
3-30-90

Form 222a
6/78

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER ANALYSIS SHEET

INITIAL REVIEW BY: KC Wilson

1. Right number 34-7080A/7186/7169 Applicant M. Todd Perkes, Tuel & Michael Aikele
2. Type of right: ☐ Decree ☑ License ☐ Claim
3. Purpose of transfer: ☑ Change point of diversion ☐ Add diversion point(s) ☑ Change place of use
   ☐ Other _____
4. Check:
   a. ☑ Source ☐ Priority ☐ Amount ☐ Purpose ☐ Period of use
   b. ☑ Description of original point of diversion.
   c. ☑ Description of original place of use.
5. Amount of land &/or water transferred:
   a. ☑ All of right.
   b. ☑ Part of right *(NOTE! Part B should be filled in only if part of the right is owned by the applicant).*
   c. ☑ Check description of point(s) of diversion.
   d. ☐ Check description of place of use.
   e. ☐ Check map (shows p.d. and p.u. after transfer).
   f. ☑ Check for correct signature, notarization, and fee.
   g. ☐ Check proof of ownership of right &/or land from which water is transferred.
   h. ☑ Check for expansion in use of right. Comments _____
   i. ☐ Check for existing water rights from same source, on land water is being transferred to.
      Right number(s) _____
   j. ☐ Is use within a Watermaster District? ☑ Yes ☐ No
      If yes, what district? 34 None

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on W.D #34 Received on 5-01-90
2. Is transfer published correctly? ☑ Yes ☐ No
3. Protest received? ☑ Yes ☐ No

A.O.P.
4-7-90

RECOMMENDED ACTION

1. ☐ Approve
2. ☐ Deny
3. Conditions* _____
4. By _____ Date _____

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OCT 19 1990
Department of Water Resources

* *All uses within Watermaster Districts require special conditions.*

Copy Alberta

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

WEST ONE BANK BUILDING
P O BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
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FRED J HAHN
KENT W FOSTER
ROBERT E FARNAM
WILLIAM D FALER
STEPHEN E MARTIN
CHARLES A HOMER
GARY L MEIKLE
MICHAEL D CRAPO
GAYLE A SORENSON
DONALD L HARRIS
GREGOR S CHVISUK
RANDALL B REED
MARIE T FEELEY
ROBERT M FOLLETT

ARTHUR W HOLDEN (1877-1967)
ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

R VERN KIDWELL OF COUNSEL

September 4, 1990

SEP 6 1990
Department of Water Resources

L. Glen Saxton, Chief
Water Allocation Bureau
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Dear Glen:

This date we sent copies of the letter of August 28, 1990, to Gary D. Slette, Lawrence Babcock and Lew Rothwell pursuant to your request.

Yours very truly,

Kent W. Foster

#3840.00/srr

INTER-DEPARTMENT MEMO — 1

FROM Glen

DATE 8-31-90

TO Files

SUBJECT — On this date, I requested that Kurt Foster serve this letter of exception dated Aug 28, 1990 upon the other parties.

— He said he would.

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MAY - 1 1990

SIGNATURE

AUG 29 1990
Department of Water Resources

LAW OFFICES
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WILLIAM S HOLDEN (1907-1988)

R VERN KIDWELL OF COUNSEL

August 28, 1990

Norm C. Young, Administrator
Resources Administration Division
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Boise, Idaho 83720

RE: Proposed Memorandum Decision and Order and Order Issuing Proposed Memorandum Decision In the Matter of Transfer No. 3675 of Water Rights Nos. 34-7080A, 34-7163 and 34-7169

Dear Mr. Young:

This letter is written in response to the Proposed Memorandum Decision and Order issued herein. First, and probably foremost, the approval is essentially valueless because the irrigation season is nearly over and the approval expires November 1st. You make mention of a possible "extension". Since that is not a procedure specifically contemplated by the statute and since we are unable to find any rules or regulations that appear applicable, we can only request that you advise us of the procedure to be followed and the authority therefor.

We must advise also that our clients are most reluctant to comply with the condition that, in exchange for approval of the transfer, they pay $100.00 per day to the Department's Enforcement Fund. In principal, it is difficult to distinguish between this condition and other acts amounting to extortion.

At least in theory, the transfer proceeding and the cease and desist proceeding are separate and distinct statutory processes or procedures. Legally, neither is relevant to the

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other. This situation points up the very problem we have been complaining about. The adverse party in the cease desist proceeding is IDWR. How can a party ever receive fair treatment from a tribunal who is also the adverse party? IDWR is not theoretically the adverse party in the transfer proceeding, but because it is the tribunal in both proceedings, it has resulted in the instant proposed abuse of executive power.

There has never been a fair and impartial evidentiary hearing where the main issues respecting the Cease and Desist Order were fully heard. Even the statute governing cease and desist orders (Idaho Code §42-351) appears to make any administrative hearing on a cease and desist order the option of the person who is the subject thereof. Our clients have not requested any administrative hearing on your Cease and Desist Order; indeed, we have previously advised you that they do not desire one for the very reasons we express herein.

You are well aware that this well has been operating since about 1980, every irrigation season. You are personally aware that over the years the Aikeles have often sought a resolution to the pending application for permit for this well. The Aikeles are satisfied that prior to the summer of 1989, they had strong assurances from you personally that you could see no problem with the proposed expenditures that year by them of in excess of $100,000.00 for rehabilitation work on the well and a new pivot.

We think the long delays and the reliance by the Aikeles upon those delays and oral assurances raise substantial equitable arguments against IDWR's ability to enforce a Cease and Desist Order. Even this year, the application for transfer, which was designed to avoid the necessity for resolution of the equitable issues, was delayed unreasonably. We practically begged IDWR to expedite the processing the application before the irrigation season began. It took over five months before the hearing was held. How can we be assured that an application for extension would be processed timely when we do not even know the procedure and are faced with the history of delays by IDWR.

It should be obvious to the most casual observer that neither you nor anyone else in IDWR can possibly decide fairly

the equitable issues we have referred to or the 1990 unreasonable delay issue. You have the most blatant of all possible conflicts on these matters; you are both the adverse party and the judge.

We had hoped the issues raised by the Cease and Desist Order could be avoided by focusing on a totally separate transfer proceeding. The two matters must still be separated and each treated on its own merits.

RESPECTFULLY SUBMITTED this 28th day of August, 1990.

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

#3840.00/srr

LAW OFFICES
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P VERN KIDWELL OF COUNSEL

August 28, 1990

Norm C. Young, Administrator
Resources Administration Division
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Boise, Idaho 83720

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We had hoped the issues raised by the Cease and Desist Order could be avoided by focusing on a totally separate transfer proceeding. The two matters must still be separated and each treated on its own merits.

RESPECTFULLY SUBMITTED this 28th day of August, 1990.

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

#3840.00/srr

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MEMORANDUM

TO: Paul Meyer

FROM: L. Glen Saxton

RE: MIKE AIKELE WELL - SWSW, Sec. 21, Twp. 4N, Rge. 26E

DATE: August 17, 1990

This memo is in response to your memo dated August 10, 1990.

You are correct that the database does not show a well in the above referenced legal description for Mike Aikele. The well, however, has been identified for potential use on Application for Transfer No. 3675 of Water Right No. 34-7080 34-7136 and 34-7196. This transfer was protested.

On July 26, 1990, the department conducted a hearing in this matter. The proposed decision in this matter was signed on August 9, 1990 and mailed about the 13th of August 1990.

At this point, the proposed decision should be allowed to run its course without other actions associated with the use such as orders to show cause and so on.

I appreciate your work in identifying wells such as this for potential action associated with continued use. Keep up the good work.

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Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620

Attorneys for Applicants

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF WATER RESOURCES OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 3675 OF WATER RIGHTS 34-7080A, 34-7136, and 34-7169.	BRIEF IN SUPPORT OF APPLICANT'S MOTION FOR ATTORNEY'S FEES

I.

STATEMENT OF FACTS

Applicants filed an application for transfer, subsequently designated No. 3675 by the Idaho Department of Water Resources (hereafter "IDWR"), on February 14, 1990. Two documents were subsequently filed in protest after publication of notice. One was filed by a group of apparently some one hundred thirty-eight people whose names are affixed to one or more copies of the document in letter form which states as reasons for the protest the following:

> "1. Nos. 34-7080A, 34-7136 & 34-7169 are apparently permit numbers only and suggest that final department approval has not been granted on the point of diversion.

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2. There is an apparent expansion of water rights.

3. An injury to prior water rights is a ~~district~~ DISTRICT [sic] possibility.

4. We have an over-appropriation of the total water supply in the basin.

5. These transfers are against the public interest."

The other protest was filed by Big Lost River Irrigation District, also in letter form, and provides:

"The stated reasons are as follows: Idaho Code §42-222--not in the public interest--the well it is being transferred to is under a cease and desist order."

Contrary to Mr. Slette's account (Mr. Slette was not present), "the decorum of the hearing" never deteriorated. There were no "heated exchanges . . . between Babcock and Foster". After the testimony of the applicants, Babcock, who had been designated "contact person" by the Hearing Officer and was seated at counsel table and allowed to cross-examine the applicants as an attorney would have been, then made a statement. Applicants' attorney was then permitted to cross-examine Mr. Babcock. After a good deal of circumlocution, Mr. Babcock admitted to being the author of the document signed by the one hundred thirty-eight people. Counsel then proceeded to inquire of Mr. Babcock as to the grounds for the protest, specifically as to what information

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protestants had access to or had developed to support the protest. Mr. Babcock often lapsed into lengthy and irrelevant statements which were not responsive to the questions asked, and counsel vigorously attempted to pursue each point until some semblance of responsive answer was obtained. To our knowledge, neither Mr. Babcock nor Mr. Foster ever became heated.

However, as cross-examination progressed, it became increasingly more apparent that not only was each of the five grounds for protest totally unsupported by any evidence in any way specific or germaine to the issue, but that neither Mr. Babcock, nor anyone he knew about, had so much as engaged in any investigative effort to obtain information in support of the allegations of the protest. For instance: the three water rights sought to be transferred were licensed many years ago, but Mr. Babcock had relied upon some old list of water rights in his possession for his statement that they were permit numbers which had never received IDWR approval; not so much as a phone call had been placed to IDWR to verify this statement; Mr. Babcock could not even furnish a possible theory under which this proposed transfer would result in an expansion; he was unable to identify any specific water right or group of water rights that either he or anyone else expected to be injured in any manner by the proposed transfer, he did make a

general statement about "over-appropriation" of the water supply, but could think of no way in which the proposed transfer constituted either an appropriation or an "over-appropriation"; and finally, as best we could understand his testimony about the public interest, it was basically that he and the one hundred thirty-seven other signers were opposed to the transfer, therefore it was against the public interest.

The chairman of the other protestant, Big Lost River Irrigation District, basically said the same thing about the public interest; that is, that lots of people were opposed and upset, therefore the transfer was contrary to the public interest. On cross-examination, he introduced a 1967 decision of IDWR in a transfer proceeding in which he had personally been a party and, as a result of which, he had apparently been denied a transfer. No evidence was offered to show that the well is "under a cease and desist order", and no attempt was made to explain how that would be relevant, if true.

It is correct that applicants' attorney made an oral motion for attorney's fees to be awarded to applicants for being compelled to defend against protests as unmeritorious and unsupported as those filed in this case. The Director is very much aware that for the past several years, many of the same group who signed these protests, have protested virtually every application for permit, transfer or exchange that has been

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filed by the individuals who own and operate farms in the area known as Era Flats, specifically including the two applicants in this case. Some have been pending without final disposition for as much as a decade. Certainly in this case, it is apparent that the protests have no merit, but do have the effect of interfering with attempts to bring otherwise unsatisfactory situations into strict compliance with the law. The effect is to harass, cause delay, and result in unnecessary expense to applicants.

II.

LEGAL ARGUMENT

The oral motion for attorney's fees was directed not only at Mr. Babcock, but all protestants, including Big Lost River Irrigation District. The motive for the oral motion, rather than being to intimidate, was to legitimately seek an award of attorney's fees for expenses to which applicants have been put needlessly. The protests are not only without merit, but have no reasonable basis in law or fact, and because the statements made therein are unsupported and not based upon any type of reasonable investigation, they are frivolous and without foundation within the meaning of Rule 54(e)(1) of the Idaho Rules of Civil Procedure.

At the time of the making of the motion, counsel's concern was basically as follows. An appeal from any decision of the

Director of IDWR is now an appeal on the record only, under Idaho Code §42-1701 and §67-5215. We think applicants are arguably entitled to attorney's fees, not only on any appeal to the district court, but also for the quasi-judicial administrative hearing before IDWR. To avoid an argument that attorney's fees were waived in the administrative proceeding because not claimed, we felt compelled to make the motion once the records showed the lack of foundation for the protests.

We cite, as our authority for an award of attorney's fees by the administrative tribunal, the recent case of Stewart v. Dept. of Health & Welfare, 115 Idaho 820, 771 P.2d 41 (1989). In that case, the Idaho Supreme Court decided the Idaho Personnel Commission had jurisdiction to award attorney's fees incurred in an administrative proceeding before the Commission. The circumstances there were no more egregious than the facts in this case and we therefore renew the request for an award of attorney's fees to the applicants.

RESPECTFULLY SUBMITTED this 15th day of August, 1990.

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

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CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering or by mailing, with the correct postage thereon, a true and correct copy thereof on this 15th day of August, 1990.

Document Served: BRIEF IN SUPPORT OF APPLICANT'S MOTION FOR ATTORNEY'S FEES

Attorneys Served:

Norm C. Young, Administrator
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Gary D. Slette, Esq.
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER, CHARTERED
P.O. Box 1906
Twin Falls, Idaho 83303

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO

#3840.00
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MEMORANDUM

FROM: Paul Meyer

TO: Glen Saxton, Norm Young

DATE: 10 August, 1990

RE: Well under Application for Permit 34-07296.

Glen,

I received a complaint last week about an operating irrigation well owned by Mike Aikele, that has no approved water right. The well is located in the SE1/4 of Section 20, T4N, R26E or the SW1/4 of Section 21, T4N, R26E.

After a field examination conducted 9 August, 1990, I found four wells in the immediate area. Three of these appear to be covered by existing licenses held by the Aikeles. The fourth, however, appears to be covered only by Application for Permit 34-07296. This application is held in the Swan Falls Trust file and has not been approved.

The well in question is located in the NESWSW of Section 21, T4N, R26E. The motor is a U.S. Motors 150 h.p. with serial/model number R2688-00-172. At the time of the investigation, it was operating and pumping into an open ditch.

34-07296 lists an extensive place of use in Section 6, T3N, R26E as well as the SWSW Section 5, T3N, R26E. The present water rights base show only unapproved applications covering this land. The SRBA base shows several rights that are being claimed for this land. However, the SRBA base shows no claimed points of diversion within the SW1/4 of Section 21, T4N, R26E.

Trans 34-7080/7136/7169

NOV 01 1990

Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
0608B/mw/08-02-90

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AUG 6 1990
Department of Water Resources

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

* * * * * * * * * *

In Re: Transfer No. 3675 pertaining to IDWR Water Rights Nos. 34-7080A, 34-7136 and 34-7169)	BRIEF IN OPPOSITION TO APPLICANTS' MOTION FOR ATTORNEY FEES

FACTS

The Applicants ("Applicants") in this matter are the owners of the above-numbered water rights, and in this proceeding they have sought to transfer the place of use of those water rights. Lawrence Babcock ("Babcock") and more than 100 other individuals (the "Protestants") protested the Applicants' proposed changes pursuant to Idaho Code §42-222(1). At the hearing of this matter conducted on July 26, Babcock acted as the lead spokesperson for the Protestants, and the Applicants were represented by their attorney, Kent Foster ("Foster"). By most accounts, the decorum of the hearing deteriorated decidedly from the outset, and heated exchanges occurred between Babcock and Foster. That exchange culminated in Foster's making an oral motion to the hearing officer for an award of attorney's fees in favor of his clients

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and against Babcock, allegedly because of Babcock's and the Protestants' filing of a "frivolous protest." The hearing officer afforded Babcock's counsel ten (10) days within which to respond to the oral motion, after which time the Applicants have been permitted a similar ten-day response period.

ARGUMENT

It is unfortunate that an ad hominem argument evolved in the context of an administrative hearing conducted with regard to the protest of a water right. Quite obviously, the Applicants disliked the notion that protests were filed with regard to their respective proposed transfers. However, in discussing the notice requirement for such an application, Idaho Code §42-222(1) states:

> Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the Department within ten (10) days of the last date of publication. (Emphasis added.)

Babcock and his fellow Protestants were well within their legal rights to file a protest to the transfer applications, and to have the matter heard by the Department pursuant to relevant statutes and rules.

Applicants' counsel has singled out Babcock to be the unwitting recipient of the frustration of the Applicants. Apparently, that is the price one pays for taking a stand in order to attempt to preserve his rights, and the rights of others. The Applicants have claimed that the protests filed by Babcock and the Protestants were frivolous, and that therefore, Babcock alone should be ordered to pay for the Applicants' fees

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incurred relative to the hearing. It is respectfully submitted that the Applicants' motion is devoid of all merit, both legally and substantively, and that it must therefore be denied.

Perhaps the most analogous legal precedent addressing the instant issue can be found in the case of Idaho Power Company v. Idaho Public Utilities Commission, 102 Idaho 744, 639 P.2d 442 (1981). In that case, the Public Utilities Commission had determined that it had authority to award attorney fees to consumer groups who had intervened in a rate making proceeding. Subsequent to the issuance of the PUC's order, the PUC attempted to assess costs in favor of the intervenors and against the utilities involved in the proceeding. Idaho Power Company and others appealed the decision of the PUC on the basis that "an administrative order may generally be collaterally attacked when the issuing agency lacks jurisdiction over the matter considered . . .." 102 Idaho at 749, citing Utah-Idaho Sugar v. Intermountain Gas Co., 100 Idaho 368, 374, 597 P.2d 1058 (1979). In concluding that the PUC had no jurisdiction to award such fees, the Idaho Supreme Court cited Washington Water Power Co. v. Kootenai Environmental Alliance, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979) for the following proposition:

> As a general rule, administrative authorities are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the statutes reposing power in them and they cannot confer it upon themselves, although they may determine whether they have it. If the provisions of the statute are not met and compliance is not had with the statutes, no jurisdiction exists. (Emphasis in original). 102 Idaho at 750.

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Continuing, the court said:

> This is especially true in light of the general rule that attorney fees cannot be recovered in an action unless authorized by statute or by express agreement of the parties. (Citations omitted). . . . This authorization is for the courts, not the Commission.
>
> The Idaho Legislature has authorized the award of attorney fees in only a few clearly defined circumstances. Idaho Code §§12-120 and 12-121 allow the courts to set attorney fees in civil damage suits under certain conditions. (Emphasis added).
>
> . . .
>
> From the foregoing statutes, it is clear that the Idaho legislature has provided for the award of attorney fees specifically when it so intends, and only when it so intends. Id. at 750-751.

The Idaho Power case makes it abundantly clear that an award of attorney's fees in a matter such as the instant protest is not permissible unless authorized by statute.

Extensive review of the Idaho Rules of Civil Procedure, the Administrative Procedures Act of Idaho (Idaho Code §67-5201, et seq.), and Title 42 of the Idaho Code provide no insight as to the basis that the Applicants might assert with regard to their motion to recover attorney's fees from Babcock. Neither do the Rules and Regulations of Water Appropriation (October 1986), nor the Rules and Regulations of Practice and Procedure (October 1983) promulgated by the State of Idaho Department of Water Resources provide any authority for a hearing officer in an administrative hearing to award attorney fees.

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Even the Applicants' counsel must concede that there are no statutory authorizations to permit such an award to be made. While the legislature has seen fit to statutorily allow courts to award attorney fees, no such authorization has been granted in administrative hearings. Application of the maxim "expressio unius est exclusio alterius" requires a conclusion that it is impossible to have this administrative tribunal award attorney's fees as requested by the Applicants.

The apparently successful motive for the Applicants' motion for recovery of attorney's fees against Babcock was to intimidate other would-be Protestants from testifying at the hearing. When all is said and done, the reader must seriously question the frivolity of the motion made by the Applicants to recover attorney's fees because of a claimed frivolous protest. It seems especially unfortunate now that a layman such as Babcock must resort to the aid of counsel, and the attendant costs, to protect a right vouchsafed to him by the legislature of this state. The oppressive conduct of Mr. Foster should not be condoned or encouraged by consideration of his request for attorney's fees.

CONCLUSION

Because no statutory authorization exists to permit the hearing officer in this matter to make an award of attorney fees, it must be concluded in accord with Idaho Power Company v. Idaho Public Utilities Commission that the Applicants' motion must be denied.

NOV

Respectfully submitted this 3rd day of August, 1990.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Gary D. Slette

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of August, 1990, I served a copy of the foregoing BRIEF IN OPPOSITION TO APPLICANTS' MOTION FOR ATTORNEY FEES, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Kent Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

_____
Gary D. Slette

FILMED
NOV 01 090

7/26/90 HMG

Parties

Attorneys —
Todd Parker
Kent Foster

Dave FLEISHER
Lew Rothwell
Lawrence Babcock

Issues

4 (42-222) Idaho Code Issues

Official Notice

Fleisher letter of 7/26/90
Water right box files 34-7080A
34-7136
34-7169
Case + Basin orders file
U.S.G.S. maps of the area

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Applicant's Case

M. Todd Parker

— owns the land
— land is in the Mt. Home area, water not used year to year. Historical received history of present wells — located in Sec 5 T4 R26E
— Agreement / AIRCO — Temporary extension year @ a time renewable at option of parties
— Been in place for 2 yrs
4 wells provided enough for 480 acres with 40% shrink
— Capacity was 12.43 cfs when licensed

X-EXAM BABCOCK

Is the well connected to the power supply? — Well is not currently pumping

Wells discharge into the Tumbleton canal not the Moore canal —

34-7136 — Is the N½ Sec 11 in the set aside yes — pump is not connected at the time to power supply —

— Nearly 4 miles SO of present point of diversion

34-7169 —

SRBA claims are for T4N R26E

TURL AIKELE —

Do you exceed 12.43 cfs diversion from your well in Sec 21 — No

Do you control the land to which the water is moved to be transferred — yes, between Mike and myself —

X-EXAM BABCOCK —

Cease & desist on this well — No, well, maybe

Present application is 34-7276

X-EXAM - Gerald Stewart

—

YOUNG - EXAM

—

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NOV 01 1990

Synopsis — 80 acres has continued to be irrigated after the ~~cease~~ cease & desist except as stopped by drought.

Babcock — could the Perkes wells be abandoned for well const rules?

Foster — abandonment is not necessary because of potential use for this & other rights —

Willing to have a conditional transfer terminated x/fer upon approval of 54-7296.

Lawrence Babcock —

Concerned that if it is a permanent transfer & a new Perkes well application will be filed causing further depletion of the reservoir.

Domestic wells have gone dry
Irrigation wells are reduced & going dry.

X-EXAM of BABCOCK by Kent Foster

Did you authorize the pro[illegible]t?
probably —

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Do you realize that these permits have been licensed? — No — Kent Hirschfeld

Rule 11 sanctions —

Expansion — would be if both ~~are~~ places are irrigated

interference with other water rights?
Do you have knowledge of a particular water right or well that is being injured by the Arlede well — yes one neighbor feels his well is being effected by the Arlede well —

4/25/89 letter of Higgins to Jerry Reynolds — reference to burden of proof being on applicant —

Crosthwait report — page 2 — estimates water yield — 425 cfs CA outflow but quantity salvageable is unknown — page 84

Four people report by Acker — interchange of GW-SW with [illegible] + pumping

Four abstract of bonus + 1922 & 1990 for irrigation wells — 935.37 cfs for G.W. — applied 314.56 cfs — Total 1249.93 cfs — 69203 acres

since 1965 — 369 cfs applied for or issued. —

shows overappropriated by 34 x tons — born out by [illegible]

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Foster: Have you discussed the change in point of diversion from Sec 5 to Sec 21 — No, only in general terms —

Why do you feel this is against the general public interest?

Seeks attorneys fees? motion for —

Concern for vegetation + fish + wildlife

Mr Lewis Rothwell —

— Public interest concern for domestic wells & fish & wildlife

—

X - Exam Foster

— drought yes for 4 years

— When droughts occurred in the past, were there water shortages yes but not this severe.

— Rothwell offered Protestants exhibit # 1 —

— Foster made point that the wells were near the river & shallow —

— objection

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Bruce Stewart —

— Questions on expertise deemed to be credible

— One of the Perkins wells is being pumped by Mr. Wilcox to fill his domestic + some portion of livestock —

for fish ponds - 80 x 100 area

Jack Howard

Expert testimony to verify Comments report -

Relative magnitude of lack of precip - vs - pumping on flow of river

Use - need to do sensitivity studies

Babcock - Clancy comment -

- attorney fees - Babcock asked for an opportunity for response & to the motion by Clancy; 10 days - Court will reply in 10 days

Referred to Jack Smart matter - proposed drainage of spring - pump test

- bifurcate the decision on attorney fees

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Aikue HRO —

1) Determine parties — ~~[illegible]~~
Tuck Aikel, Mike Aikels, Todd Perkes — Karl Foster
Big Cat Irrig Dist — Lew Rothwell
Lawrence Boboock — Petitioners
FmHA ?

2) Hold conf to determine issues
transp — 4 stream by
Cease & desist —
Has water been used without a valid right?
Has water been diverted after service of cease & desist?
Should IDWR propose & collect a fine.

3) Official Notice of : Xpt-3675
Files — 34-7080A, 34-7156, & 34-7169
USGS Quad map
Cease & desist order; file

4) Take appearances —

RECEIVED
NOV 01 1990

Approve / conditions

(1) FmHa approval required

(2) Wells capped & not used - prior to diversion & use of water

(3) Penalty of [illegible] for use of water prior to approval

(4) for the period June — to July

(5) his approval is effective [illegible] created November 1, 1990 unless extended by the director. Upon termination of this approval or any extension thereof the place of use and point of diversion for these rights reverts to DO that existing prior to the approval.

- Measuring device prior to diversion —
- Control of evaporation
- Only use the existing well not further deepening
- Land transfer
- Conditions of license

NOV 01 1990

other issue of the hearing. The record being complete the hearing officer enters the following proposed findings of fact, conclusions of law and order:

~~Findings of Fact~~

The following issues were ~~to be~~ ruled on concerning ~~the~~ transfer application #36755:

(1) Whether other water rights will be injured

(2) Whether the change will constitute an enlargement in use

(3) Whether the change ~~is~~ is in the local public interest

(4) Whether the change is consistent with the conservation of water resources within the state of Idaho.

(5) Whether the rights sought to be changed have been confirmed by decree and ~~are~~ can be changed under 42-222, Idaho Code

~~Whether the Director should~~

~~Whether the Director~~

The following issues were ~~determined~~ ruled on concerning the ~~case~~ final ~~decision~~ order:

1) Have the S½ SW¼ Sec 6 T 3N R 26E been irrigated this season ~~to~~ without valid approved water right ~~to do so~~?

FILED
NOV 01 1999

Petitioners indicated that the [redacted] order could not be complied with [redacted] and asked that the pending application for transfer #3675 which, if approved, would authorize irrigation of the lands that are the subject of the order to cease & desist.

A hearing was held on July 26, 1990, in Orovada, Nev. to consider the protests against approval of transfer application No. 3675 and the order to cease and desist. The applicants and the recipients of the [redacted] order were represented by Mr Kent Foster. Big Lot Irrigation District was represented by Chairman Lewis Rothwell. Mr Lawrence Babcock acted as spokesperson for the protestant petition signers. The petitioners/protestants were given the opportunity to present testimony. [redacted]

[redacted]

No 91. — At the hearing Mr Foster entered a motion seeking a ruling from the department that the protestants pay attorney's fees and expenses alleging that the issues raised by the protestants were frivolous and without merit. A schedule was entered for briefing the issue of payment of attorneys fees, and the record was closed concerning the

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Conclusions of law -

(1) Sec 42-222(1) provides that "
(2) other water rights will not be injured "
(3) Not contrary to conservation "
(4) Use of water is in the local public interest
(5) Application is consistent with conservation of water in Idaho

(6) Water has been used on S½ SW¼ Sec 6 without having a valid water right

(7) Water has been and is being used on S½ SW¼ Sec 6 after receipt of an order of the director to cease & desist using water

(8) 42-352 provides

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2.) Have the Aukéis continued to ~~use~~ water on the S½ SW¼ Sec 6 T3N R26E after service of the cease and desist order?

3) Should IDWR ~~pursue~~ ~~the matter further~~ seek enforcement of the cease & desist order?

~~Findings~~ of Fact —

1. ~~Description~~ of existing right
2. Error in P.D.
3. Remote Transfer
4. Notice of application
5. Issues noted
6. ~~Facts~~ Wells to be used for 5-10 yrs, rate of diversion of the well is less than the 12.43 outlined by Law
7. Water rights on new place of use
8. Water has been used under the license, rights within the past five years - set aside program
9. Applicants own ~~MISCFILMED~~ contract to allow use of water NOV 01 1990
10. Facts is nitrogen fixation, water right or ~~collateral~~ for loan
11. Drought, reduced under lease, well dryed up or redrilled even dry from known down
12. No additional water diverted or used
13.

Before the Department of Water Resources
of the State
of Idaho

In the matter of transfer No 3675 of water rights 34-7080A, 34-7136, & 34-7169 in the name of M. Todd Perkes, Joel Aikele & Michael Aikele and the Cease & Desist Order issued by the dept on June 22, 1990

Proposed finding of fact, Conclusion of law and Order

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On February 14, 1990 M. Todd Perkes, Joel Aikele, & Michael Aikele applied for transfer No 3675 to change the point of diversion and place of use of water rights No. 34-7080A, 34-7136, and 34-7169. The application was protested by the Big Lost River Irrigation District and by 1— persons signing a petition submitted by Lawrence Babcock.

On June 22, 1990 the department issued an order to Don A. Aikele, Joel Aikele and Michael Aikele to cease and desist irrigation of land within the S½SW¼ Sec 6 T3N R26E until a right to do so is obtained or identified. Subsequent correspondence from Michael Easter, attorney at law for the

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A34-02358A**
Date Received: 1/16/1990
Receipt No: E011710
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: JUEL AIKELE 208-527-3197
   Address: RT. 1 BOX 63D
   MOORE, ID 83255

2. Date of Priority: FEB 01, 1961

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
04N	26E	17	SW SW		BUTTE

5. Description of diverting works:
   WELL/PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	5.600		

7. Total Quantity Appropriated is:
   5.600 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 899.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	26E	6	NE NE		IRR	40.0
			NW NE		IRR	40.0
			SW NE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
03N	26E	6	SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
					Section Acres		480.0
3N	25E	13	NE	NE		IRR	20.0
			NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			SE	NE		IRR	40.0
			NE	NW		IRR	30.0
			SE	NW		IRR	30.0
			NE	SW		IRR	37.0
			SE	SW		IRR	18.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	23.0
			SE	SE		IRR	5.0
					Section Acres		347.0
04N	26E	29	NW	SW		IRR	34.0
			SW	SW		IRR	10.0
					Section Acres		44.0
		30	NE	SE		IRR	39.0
			SE	SE		IRR	39.0
					Section Acres		78.0
		31	NE	NE		IRR	34.0
			NW	NE		IRR	35.0
			SW	NE		IRR	39.0
			SE	NE		IRR	39.0
			NE	NW		IRR	28.0
			NW	NW		IRR	33.0
			SW	NW		IRR	39.0
			SE	NW		IRR	37.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			SW	SW		IRR	39.0
			SE	SW		IRR	39.0
			NE	SE		IRR	39.0
			NW	SE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
04N	26E	31	SW	SE		IRR	39.0
			SE	SE		IRR	39.0
					Section Acres		596.0
					Total Acres		1545.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
34-2419A, 2417A, 2472A, 00032B, 2429B, 2315, 0259C

14. Remarks:
TRANS. NO. 2817.
THE RATE OF DIVERSION AT THE FIELD HEAD GATE SHALL NOT EXCEED 0.02 CFS/ACRE NOR MORE THAN 4.0 AFA.
THE MAXIMUM RATE OF DIVERSION SHALL NOT EXCEED 5.6 CFS AT THE WELL.

15. Basis of Claim: LICENSE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A34-02315**
Date Received: 1/16/1990
Receipt No: E011710
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: JUEL AIKELE 208-527-3197
   Address: RT. 1 BOX 63D
   MOORE, ID 83255

2. Date of Priority: JAN 07, 1955

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	26E	17		SW	SW		BUTTE

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	7.020		

7. Total Quantity Appropriated is:
   7.020 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 1128.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
03N	26E	6	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
			SW	NE		IRR	40.0

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10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
03N	26E	6	SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
					Section Acres		480.0
3	25 2	13	NE	NE		IRR	20.0
			NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			SE	NE		IRR	40.0
			NE	NW		IRR	30.0
			SE	NW		IRR	30.0
			NE	SW		IRR	37.0
			SE	SW		IRR	18.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	23.0
			SE	SE		IRR	5.0
					Section Acres		347.0
04N	26E	29	NW	SW		IRR	34.0
			SW	SW		IRR	10.0
					Section Acres		44.0
		30	NE	SE		IRR	39.0
			SE	SE		IRR	39.0
					Section Acres		78.0
		31	NE	NE		IRR	34.0
			NW	NE		IRR	35.0
			SW	NE		IRR	39.0
			SE	NE		IRR	39.0
			NE	NW		IRR	28.0
			NW	NW		IRR	33.0
			SW	NW		IRR	39.0
			SE	NW		IRR	37.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			SW	SW		IRR	39.0
			SE	SW		IRR	39.0
			NE	SE		IRR	39.0
			NW	SE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
04N	26E	31	SW	SE		IRR	39.0
			SE	SE		IRR	39.0

Section Acres 596.0

Total Acres 1545.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
34-2358A,02419A,02417A, 02472A, 00032B, 0259C, 2429B

14. Remarks:
TRANS. NO. 2817.
2 P/D IN SWSW SEC. 17 T4N, R26E.
THE RATE OF DIVERSION AT THE FIELD HEAD GATE SHALL NOT EXCEED 0.02 CFS/ACRE NOR MORE THAN 4.0 AFA.
THE MAXIMUM RATE OF DIVERSION SHALL NOT EXCEED 7.02 CFS AT THE WELL, AND SHALL NOT EXCEED 5.44 CFS NOR MORE THAN 1088 AF/ANNUM AT THE FIELD GATE.

15. Basis of Claim: LICENSE
Water Right Number: 25355

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A34-02417A**
Date Received: 1/16/1990
Receipt No: E011710
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JUEL AIKELE 208-527-3197
   Address: RT. 1 BOX 63D
   MOORE, ID 83255

2. Date of Priority: MAY 29, 1961

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
04N	26E	8	NE SW		BUTTE

5. Description of diverting works:
   WELL/PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A
IRRIGATION	04/01	11/01	2.670		

7. Total Quantity Appropriated is:
   2.670 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 429.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	26E	6	NE NE		IRR	40.0
			NW NE		IRR	40.0
			SW NE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
03N	26E	6	SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
					Section Acres		480.0
		13	NE	NE		IRR	20.0
			NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			SE	NE		IRR	40.0
			NE	NW		IRR	30.0
			SE	NW		IRR	30.0
			NE	SW		IRR	37.0
			SE	SW		IRR	18.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	23.0
			SE	SE		IRR	5.0
					Section Acres		347.0
04N	26E	29	NW	SW		IRR	34.0
			SW	SW		IRR	10.0
					Section Acres		44.0
		30	NE	SE		IRR	39.0
			SE	SE		IRR	39.0
					Section Acres		78.0
		31	NE	NE		IRR	34.0
			NW	NE		IRR	35.0
			SW	NE		IRR	39.0
			SE	NE		IRR	39.0
			NE	NW		IRR	28.0
			NW	NW		IRR	33.0
			SW	NW		IRR	39.0
			SE	NW		IRR	37.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			SW	SW		IRR	39.0
			SE	SW		IRR	39.0
			NE	SE		IRR	39.0
			NW	SE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
04N	26E	31	SW	SE		IRR	39.0
			SE	SE		IRR	39.0

Section Acres 596.0

Total Acres 1545.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
34-2472A, 2419A, 2358A, 00032B, 2429B, 2315, 10815

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do ____ do not ____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
) SS.
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____

_____
Notary Public

Seal

Residing at _____

My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A34-02419A**
Date Received: 1/16/1990
Receipt No: E011710
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JUEL AIKELE 208-527-3197
   Address: RT. 1 BOX 63D
   MOORE, ID 83255

2. Date of Priority: JUN 05, 1961

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
04N	26E	20	NW NE		BUTTE

5. Description of diverting works:
   WELL/PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.010		

7. Total Quantity Appropriated is:
   2.010 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 323.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	26E	6	NE NE		IRR	40.0
			NW NE		IRR	40.0
			SW NE		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
03N	26E	6	SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
					Section Acres		480.0
3	25 2	13	NE	NE		IRR	20.0
			NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			SE	NE		IRR	40.0
			NE	NW		IRR	30.0
			SE	NW		IRR	30.0
			NE	SW		IRR	37.0
			SE	SW		IRR	18.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	23.0
			SE	SE		IRR	5.0
					Section Acres		347.0
04N	26E	29	NW	SW		IRR	34.0
			SW	SW		IRR	10.0
					Section Acres		44.0
		30	NE	SE		IRR	39.0
			SE	SE		IRR	39.0
					Section Acres		78.0
		31	NE	NE		IRR	34.0
			NW	NE		IRR	35.0
			SW	NE		IRR	39.0
			SE	NE		IRR	39.0
			NE	NW		IRR	28.0
			NW	NW		IRR	33.0
			SW	NW		IRR	39.0
			SE	NW		IRR	37.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			SW	SW		IRR	39.0
			SE	SW		IRR	39.0
			NE	SE		IRR	39.0
			NW	SE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
04N	26E	31	SW	SE		IRR	39.0
			SE	SE		IRR	39.0

Section Acres 596.0

Total Acres 1545.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
34-2472A, 2417A, 2358A, 00032B, 2429B, 2315, 10815

14. Remarks:

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do ____ do not ____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
) SS.
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____

_____
Notary Public

Seal

Residing at _____

My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER FROM THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A34-02429B**
Date Received: 1/16/1990
Receipt No: E011710
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: JUEL AIKELE 208-527-3197
   Address: RT. 1 BOX 63D
   MOORE, ID 83255

2. Date of Priority: JUN 22, 1961

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
04N	26E	20	NW NW		BUTTE

5. Description of diverting works:
   WELL/PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.780		

7. Total Quantity Appropriated is:
   2.780 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 447.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	26E	6	NE NE		IRR	40.0
			NW NE		IRR	40.0
			SW NE		IRR	40.0

RECEIVED

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
03N	26E	6	SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
					Section Acres		480.0
3	25?	13	NE	NE		IRR	20.0
			NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			SE	NE		IRR	40.0
			NE	NW		IRR	30.0
			SE	NW		IRR	30.0
			NE	SW		IRR	37.0
			SE	SW		IRR	18.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	23.0
			SE	SE		IRR	5.0
					Section Acres		347.0
04N	26E	29	NW	SW		IRR	34.0
			SW	SW		IRR	10.0
					Section Acres		44.0
		30	NE	SE		IRR	39.0
			SE	SE		IRR	39.0
					Section Acres		78.0
		31	NE	NE		IRR	34.0
			NW	NE		IRR	35.0
			SW	NE		IRR	39.0
			SE	NE		IRR	39.0
			NE	NW		IRR	28.0
			NW	NW		IRR	33.0
			SW	NW		IRR	39.0
			SE	NW		IRR	37.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			SW	SW		IRR	39.0
			SE	SW		IRR	39.0
			NE	SE		IRR	39.0
			NW	SE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
04N	26E	31	SW	SE		IRR	39.0
			SE	SE		IRR	39.0

Section Acres 596.0

Total Acres 1545.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
34-2419A, 2417A, 2472A, 00032B, 2458A, 2315, 10815

14. Remarks:
TRANS. NO. 2991.

15. Basis of Claim: LICENSE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A34-02472A**
Date Received: 1/16/1990
Receipt No: E011710
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: JUEL AIKELE 208-527-3197
   Address: RT. 1 BOX 63D
   MOORE, ID 83255

2. Date of Priority: DEC 29, 1965

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
04N	26E	17	NE SW		BUTTE

5. Description of diverting works:
   WELL/PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	6.820		

7. Total Quantity Appropriated is:
   6.820 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 1095.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	26E	6	NE NE		IRR	40.0
			NW NE		IRR	40.0
			SW NE		IRR	40.0

Received
NOV 91

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
03N	26E	6	SE	NE		IRR	40.0
			NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			NE	SE		IRR	40.0
			NW	SE		IRR	40.0
					Section Acres		480.0
3	25?	13	NE	NE		IRR	20.0
			NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			SE	NE		IRR	40.0
			NE	NW		IRR	30.0
			SE	NW		IRR	30.0
			NE	SW		IRR	37.0
			SE	SW		IRR	18.0
			NE	SE		IRR	39.0
			NW	SE		IRR	40.0
			SW	SE		IRR	23.0
			SE	SE		IRR	5.0
					Section Acres		347.0
04N	26E	29	NW	SW		IRR	34.0
			SW	SW		IRR	10.0
					Section Acres		44.0
		30	NE	SE		IRR	39.0
			SE	SE		IRR	39.0
					Section Acres		78.0
		31	NE	NE		IRR	34.0
			NW	NE		IRR	35.0
			SW	NE		IRR	39.0
			SE	NE		IRR	39.0
			NE	NW		IRR	28.0
			NW	NW		IRR	33.0
			SW	NW		IRR	39.0
			SE	NW		IRR	37.0
			NE	SW		IRR	39.0
			NW	SW		IRR	39.0
			SW	SW		IRR	39.0
			SE	SW		IRR	39.0
			NE	SE		IRR	39.0
			NW	SE		IRR	39.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
04N	26E	31	SW	SE		IRR	39.0
			SE	SE		IRR	39.0

Section Acres 596.0

Total Acres 1545.0

11. Place of use in counties: BUTTE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
34-2419A, 2417A, 2358A, 00032B, 2429B, 2315, 10815

14. Remarks:
TRANS. NO. 2817.

15. Basis of Claim: LICENSE

Protestant's Exhibit #1 - admitted 1-26-1990 VTJ

BEFORE THE LOCAL GROUND WATER BOARD FOR BUTTE COUNTY

STATE OF IDAHO

LUTHER WEIGEL, a single man, LEWIS ROTHWELL and OLIVE ROTHWELL, husband and wife, and JOHN F. PHILLIPS and HELEN L. PHILLIPS, husband and wife, Claimants, v. O. T. JONES and RUBY JONES, husband and wife, CLYDE McARTHY and ANITA McARTHY, husband and wife, and LYLE JEFFERSON and MRS. LYLE JEFFERSON, husband and wife, Respondents.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

---o---

This matter came on regularly for hearing on April 10, 1967, before the local Ground Water Board for Butte County, consisting of Mr. R. Keith Higginson, State Reclamation Engineer, Chairman, Mr. Thomas R. Newell, Boise, Idaho, an engineer appointed by the Judge of the District Court; and Mr. Emlen G. Hays, Howe, Idaho, a resident irrigation farmer of Butte County, who was selected by the other two Board members.

Claimants were represented by their attorney, Robert M. Perr, Jr.; Respondents appeared through their attorney, A. L. Smith; and the Department of Reclamation was represented by William D. Collins, Assistant Attorney General.

Following the hearing, the Board issued its order dated July 14, 1967, requiring briefs on questions of law and a field investigation and pumping test to be made by the Department of Reclamation. It was anticipated that such studies would be made after the end of the irrigation season of 1967; however, water conditions at that time were such that the Department felt that such study would give inconclusive results. These studies were made in the latter part of October 1968, and the procedure and results were the subject of the continued hearing of the Board held in Arco, Idaho, on January 21, 1969.

Having heard and reviewed all the evidence and being informed as to questions of law through briefs submitted by the parties, the Board makes the following Findings of Fact and Conclusions of Law:

Findings of Fact:

(1) Claimant Winger holds decreed rights to water from Spring Creek, James Creek and the Big Lost River, which are used to irrigate 101 acres of land located in the NE¼ of Section 26, T. 4 N., R. 26 E., B.M. In addition his lands receive benefit from so-called "rising" or "sub" water which partially satisfies the irrigation requirement.

(2) Claimants Rothwell hold decreed rights to water from the Big Lost River and its tributaries, which is used to irrigate lands in Sections 25 and 26, T. 4 N., R. 26 E., B.M. The water under these rights is supplemented at times by water pumped from a well (no number assigned to this well during the hearings) located in the SW¼NE¼, Section 26, T. 4 N., R. 26 E., B.M. Said well is cased with 51 feet of 16-inch diameter pipe which is perforated from 11 feet to 51 feet below land surface. Right to use of water from the well was obtained by Rothwells' predecessor, George R. Tappan, under Permit G-29437 for which license has been issued in the amount of 1.94 second feet of water for irrigation of 27 acres in SW¼NE¼, Section 26, and 29 acres in SW¼NW¼, Section 25, T. 4 N., R. 26 E., B.M., with priority date of February 15, 1961. Rothwells also receive benefit to their lands from "rising" or "sub" waters.

(3) Claimants Phillips hold decreed and storage rights to water from the Big Lost River which is used to irrigate lands lying partially in Section 23, T. 4 N., R. 26 E., B.M. They also claim benefit from "rising" or "sub" waters which lessen the amount of irrigation water which must be applied to produce crops.

(4) Respondents Jones own a well (Well No. 2) located approximately 75 feet north of the Arco Canal within the SW¼SE¼ of Section 23, T. 4 N., R. 26 E., B.M. This well was drilled under Permit G-28583 which has a priority date of March 31, 1960, and provides for diversion of 4.8 second feet of water from the well into the Arco Canal in which it is to be conveyed and used to irrigate 240 acres of land in Sections 10, 11, 14 and 15, T. 3 N., R. 27 E., B.M. These lands are outside of the boundary of the Big Lost River Irrigation District. Jones' right to water from the well is subject to completion of all of the statutory requirements for issuance of a license by the Department of Reclamation. (Carriage rights in the Arco Canal must be confirmed by private negotiation or other legal action.) The well is 40 to 50 feet deep and cased with 20-inch diameter concrete pipe casing which is perforated with small holes below twenty feet below land surface.

(5) Respondents McAffee own two wells (Wells Nos. 1 and 3) each of which is located within the SW¼SE¼ of Section 23, T. 4 N., R. 26 E., B.M. Well No. 1 is located approximately 75 feet and Well No. 3 approximately one-quarter mile north of the Arco Canal.

Well No. 1 was drilled under Permit G-28770 which has a priority date of June 30, 1960, and provides for diversion of 6.4 second feet of water from the well into the Arco Canal in which it is to be conveyed and used to irrigate 320 acres of land outside the boundary of the Big Lost River Irrigation District in Sections 4 and 5, T. 3 N., R. 27 E., B.M. McAffees' right is subject to completion of all of the statutory requirements for issuance of a license by the Department of Reclamation. (Carriage rights in the Arco Canal must be confirmed by private negotiation or other legal action.) The well is 51 feet deep and is cased with 50 feet of 12-inch diameter casing which is perforated from land surface to the bottom and is also equipped with a 48" screen in the bottom. McAffee has not obtained rights to carry water from this well through the Arco Canal.

Well No. 3 was drilled under Permit G-32881 which has a priority date of May 12, 1966, and provides for diversion of 1.6 second feet of water from the well to be used to irrigate 80 acres of land in the S½SE¼ of Section 23, T. 4 N., R. 26 E., B.M. Evidence indicates that water from this well has been delivered into the Arco Canal for use on other than the permitted lands. McAffees' right is subject to completion of all statutory requirements for issuance of a license by the Department of Reclamation. The well is 56 feet deep and is cased with 57 feet of 16-inch diameter casing which is perforated from land surface to the bottom.

(6) Respondents Peterson own a well (Well No. 4) which is located approximately 75 feet north of the Arco Canal within the SW¼SE¼ of Section 23, T. 4 N., R. 26 E., B.M. This well was drilled under Permit G-33031 which has a priority date of July 21, 1966, and provides for diversion of 6.8 second feet of water from the well into the Arco Canal in which it is to be conveyed and used to irrigate 340 acres of land in Sections 9 and 10, T. 3 N., R. 27 E., B.M. These lands are outside of the boundary of the Big Lost River Irrigation District. Petersons' right is subject to completion of all of the statutory requirements for issuance of a license by the Department of Reclamation. (Carriage rights in the Arco Canal must be confirmed by private negotiation or other legal action.) The well is 50 feet deep and is cased with 50 feet of 16-inch diameter casing which is perforated from 12 feet below land surface to the bottom of the well. This well

has not as yet been equipped with a pump and motor and no water has been diverted from it.

(7) The test pumping conducted by the Department of Reclamation conclusively demonstrated that pumping of Respondents' wells Nos. 1, 2 and 3 causes lowering of the water table and the drying up of springs and seeps on Claimants' lands. This test pump and the testimony also indicated that the water from the springs and seeps flow and collect together in a natural channel (Spring Creek) which crosses the McAffee and Rothwell properties and joins the Big Lost River. Since withdrawal of water from the wells reduces the flow of these seeps and springs, it is our opinion that the shallow ground water intercepted by the wells is a tributary to, and part of the water supply of the Big Lost River.

(8) Respondents Petersons' Well No. 4 and Claimants Rothwells' well described in paragraph (2) above, appear to be located in the same shallow ground-water system as Wells Nos 1, 2 and 3. We therefore find that the pumping of the Peterson and Rothwell wells will have similar detrimental effects upon the water table and the flow of springs and seeps on the Claimants' lands.

(9) Use of water from the McAffee Well No. 3 and the Rothwell well upon the lands to which the respective water rights covering such wells are appurtenant would have less of a detrimental effect than would use of Wells Nos. 1, 2 and 4, since such lands are adjacent to the wells and in the area of "rising waters" while the lands proposed to be served by Wells Nos. 1, 2 and 4 are some 6 miles distant from the wells and apparently beyond the area of "rising waters".

(10) The test pump failed to show any detrimental effect on the water level in the Arco Canal, but it is the feeling of the Board that the results in this regard were inconclusive and additional studies would have to be made to clearly establish any relationship between pumping of these shallow wells in close proximity to the canal and the flow of the canal.

(11) Respondents have, at times, used water from some of their wells upon lands other than those for which permit was obtained. There is no indication that required prior approval of such amendment of the permits had been obtained from the Department of Reclamation.

Conclusions of Law:

(1) One of the questions raised of legal counsel for the parties was: "Under Idaho Law, is sub-irrigation or natural irrigation due to high water table a water right which enjoys the protection of law against subsequent appropriations of water?" Each side submitted a brief on the subject. These have been carefully reviewed by the Board and we are unable to form a judgment concerning this question. However, we do not feel that a resolution of the matter is necessary to a decision concerning future use of the wells based on the foregoing findings of fact.

(2) Claimants Pothwell and Respondents all have wells which intercept shallow "rising" water which is tributary to and a part of the water supply of the Big Lost River. Any diversion of water from these wells must, therefore, be specifically subject to the condition that all prior rights to water from Big Lost River at or below the Arco Canal diversion are being furnished with their full supply.

(3) The practice of renting or leasing water from a well to be used on land other than provided in the permit under which the well was drilled is not proper under Idaho law, unless said permit is first amended under the statutory process.

(4) Respondents are entitled to divert water from their wells under the respective priorities of Permits Nos. 23583, 28770, 32881 and 33031, subject to their completion of the statutory requirements for issuance of license of water right by the Department of Reclamation, and further subject to the terms of this order.

(5) The well owners are entitled to redrill, deepen or replace their wells and to relocate the points of diversion so as to negate the interference with the shallow ground water of the area, and to prevent interference with prior rights. Such reconstruction must be approved by the Department of Reclamation, and be accomplished so as to prevent the withdrawal of water from the shallow "rising" waters and increases in the seepage losses from the Arco Canal as may later be proven.

Order:

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters herein its order as follows:

(1) Unless and until such time as the Respondents and Claimant Rothwell exercise their rights to redrill, deepen or replace their existing wells under supervision of the Department of Reclamation, no water may be diverted from Respondents' Wells Nos. 1, 2, 3 or 4, nor from Claimant Rothwell's Well located in the NE¼ of Section 26, T. 4 N., R. 26 E., B.M., except during periods when the flow of the Big Lost River at and below the Arco Canal Diversion is sufficient to satisfy such prior rights as have been adjudicated by the court, and valid prior permits and licenses issued by the State Reclamation Engineer.

(2) Use of Respondents' Wells and Claimant Rothwell's Well is subject to the control and jurisdiction of the Big Lost River watermaster (Water District #27) and such wells may not be operated without his concurrence that the conditions of the previous paragraph are being satisfied.

(3) Water from the wells may be used only on the lands specified in the respective permits as such permits currently specify or as they may be subsequently amended as a result of Application to the Department of Reclamation.

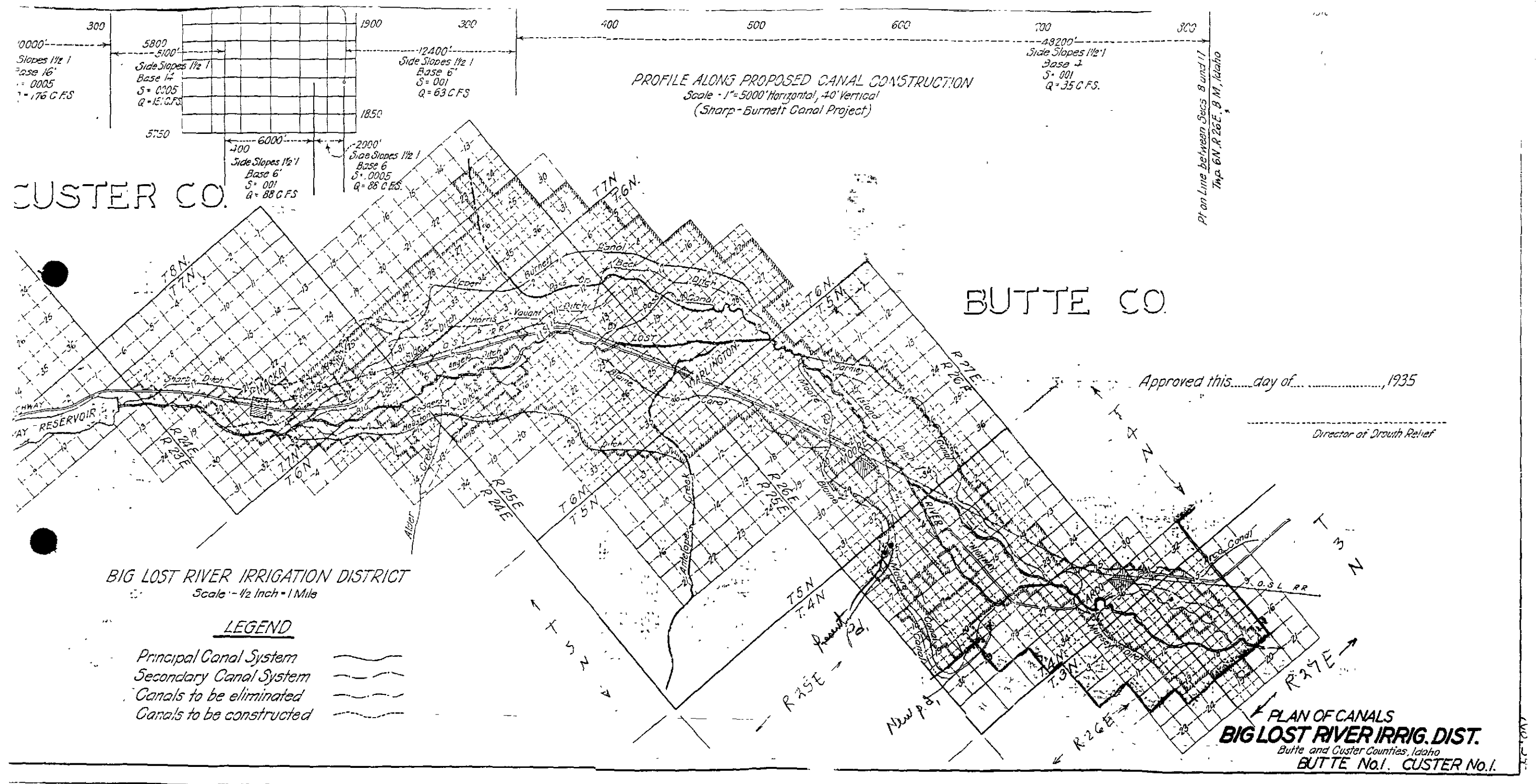
Dated this 3rd day of October, 1969.

LOCAL GROUND-WATER BOARD FOR BUTTE COUNTY

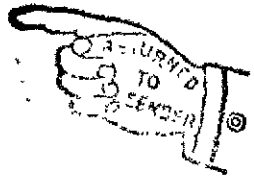
R. KEITH HIGGINSON, CHAIRMAN

THOMAS R. NEWELL

ELLEN G. MAYS


PROFILE ALONG PROPOSED CANAL CONSTRUCTION
Scale - 1"=5000' Horizontal, 40' Vertical
(Sharp - Burnett Canal Project)
CUSTER CO.
BUTTE CO.
Pt on Line between Secs 8 and 17 Twp. 6N, R 25E, B M, Idaho
Approved this.....day of.....,1935
Director of Drouth Relief
BIG LOST RIVER IRRIGATION DISTRICT
Scale - 1/2 Inch = 1 Mile
LEGEND
Principal Canal System
Secondary Canal System
Canals to be eliminated
Canals to be constructed
PLAN OF CANALS
BIG LOST RIVER IRRIG. DIST.
Butte and Custer Counties, Idaho
BUTTE No.1. CUSTER No.1.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
01 North Orchard Street
oise, Idaho 83706-2237



MARSHALL TODD PERKES
ROUTE 1 BOX 110
ARCO ID 83213

AUTHORIZED TIME FOR FORWARDING
Has Expired.

PERKES, Todd 1-408 3-7-89
RT 1 BOX 69
MOORE ID 83255

Resent to
this address.
9-21-90
GB

34-7080A

Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
0608B/mw/08-02-90

AUG 6 1990
Department of Water Resources

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

* * * * * * * * * * *

In Re: Transfer No. 3675 pertaining to IDWR Water Rights Nos. 34-7080A, 34-7136 and 34-7169)	BRIEF IN OPPOSITION TO APPLICANTS' MOTION FOR ATTORNEY FEES

FACTS

The Applicants ("Applicants") in this matter are the owners of the above-numbered water rights, and in this proceeding they have sought to transfer the place of use of those water rights. Lawrence Babcock ("Babcock") and more than 100 other individuals (the "Protestants") protested the Applicants' proposed changes pursuant to Idaho Code §42-222(1). At the hearing of this matter conducted on July 26, Babcock acted as the lead spokesperson for the Protestants, and the Applicants were represented by their attorney, Kent Foster ("Foster"). By most accounts, the decorum of the hearing deteriorated decidedly from the outset, and heated exchanges occurred between Babcock and Foster. That exchange culminated in Foster's making an oral motion to the hearing officer for an award of attorney's fees in favor of his clients

and against Babcock, allegedly because of Babcock's and the Protestants' filing of a "frivolous protest." The hearing officer afforded Babcock's counsel ten (10) days within which to respond to the oral motion, after which time the Applicants have been permitted a similar ten-day response period.

ARGUMENT

It is unfortunate that an ad hominem argument evolved in the context of an administrative hearing conducted with regard to the protest of a water right. Quite obviously, the Applicants disliked the notion that protests were filed with regard to their respective proposed transfers. However, in discussing the notice requirement for such an application, Idaho Code §42-222(1) states:

> Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the Department within ten (10) days of the last date of publication. (Emphasis added.)

Babcock and his fellow Protestants were well within their legal rights to file a protest to the transfer applications, and to have the matter heard by the Department pursuant to relevant statutes and rules.

Applicants' counsel has singled out Babcock to be the unwitting recipient of the frustration of the Applicants. Apparently, that is the price one pays for taking a stand in order to attempt to preserve his rights, and the rights of others. The Applicants have claimed that the protests filed by Babcock and the Protestants were frivolous, and that therefore, Babcock alone should be ordered to pay for the Applicants' fees

incurred relative to the hearing. It is respectfully submitted that the Applicants' motion is devoid of all merit, both legally and substantively, and that it must therefore be denied.

Perhaps the most analogous legal precedent addressing the instant issue can be found in the case of Idaho Power Company v. Idaho Public Utilities Commission, 102 Idaho 744, 639 P.2d 442 (1981). In that case, the Public Utilities Commission had determined that it had authority to award attorney fees to consumer groups who had intervened in a rate making proceeding. Subsequent to the issuance of the PUC's order, the PUC attempted to assess costs in favor of the intervenors and against the utilities involved in the proceeding. Idaho Power Company and others appealed the decision of the PUC on the basis that "an administrative order may generally be collaterally attacked when the issuing agency lacks jurisdiction over the matter considered . . .." 102 Idaho at 749, citing Utah-Idaho Sugar v. Intermountain Gas Co., 100 Idaho 368, 374, 597 P.2d 1058 (1979). In concluding that the PUC had no jurisdiction to award such fees, the Idaho Supreme Court cited Washington Water Power Co. v. Kootenai Environmental Alliance, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979) for the following proposition:

> As a general rule, administrative authorities are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the statutes reposing power in them and they cannot confer it upon themselves, although they may determine whether they have it. If the provisions of the statute are not met and compliance is not had with the statutes, no jurisdiction exists. (Emphasis in original). 102 Idaho at 750.

Continuing, the court said:

> This is especially true in light of the general rule that attorney fees cannot be recovered in an action unless authorized by statute or by express agreement of the parties. (Citations omitted). . . . This authorization is for the courts, not the Commission.
>
> The Idaho Legislature has authorized the award of attorney fees in only a few clearly defined circumstances. Idaho Code §§12-120 and 12-121 allow the courts to set attorney fees in civil damage suits under certain conditions. (Emphasis added).
>
> . . .
>
> From the foregoing statutes, it is clear that the Idaho legislature has provided for the award of attorney fees specifically when it so intends, and only when it so intends. Id. at 750-751.

The Idaho Power case makes it abundantly clear that an award of attorney's fees in a matter such as the instant protest is not permissible unless authorized by statute.

Extensive review of the Idaho Rules of Civil Procedure, the Administrative Procedures Act of Idaho (Idaho Code §67-5201, et seq.), and Title 42 of the Idaho Code provide no insight as to the basis that the Applicants might assert with regard to their motion to recover attorney's fees from Babcock. Neither do the Rules and Regulations of Water Appropriation (October 1986), nor the Rules and Regulations of Practice and Procedure (October 1983) promulgated by the State of Idaho Department of Water Resources provide any authority for a hearing officer in an administrative hearing to award attorney fees.

Even the Applicants' counsel must concede that there are no statutory authorizations to permit such an award to be made. While the legislature has seen fit to statutorily allow courts to award attorney fees, no such authorization has been granted in administrative hearings. Application of the maxim "expressio unius est exclusio alterius" requires a conclusion that it is impossible to have this administrative tribunal award attorney's fees as requested by the Applicants.

The apparently successful motive for the Applicants' motion for recovery of attorney's fees against Babcock was to intimidate other would-be Protestants from testifying at the hearing. When all is said and done, the reader must seriously question the frivolity of the motion made by the Applicants to recover attorney's fees because of a claimed frivolous protest. It seems especially unfortunate now that a layman such as Babcock must resort to the aid of counsel, and the attendant costs, to protect a right vouchsafed to him by the legislature of this state. The oppressive conduct of Mr. Foster should not be condoned or encouraged by consideration of his request for attorney's fees.

CONCLUSION

Because no statutory authorization exists to permit the hearing officer in this matter to make an award of attorney fees, it must be concluded in accord with Idaho Power Company v. Idaho Public Utilities Commission that the Applicants' motion must be denied.

NOV 01 198

Respectfully submitted this 3rd day of August, 1990.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Gary D. Slette

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of August, 1990, I served a copy of the foregoing BRIEF IN OPPOSITION TO APPLICANTS' MOTION FOR ATTORNEY FEES, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Kent Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

_____
Gary D. Slette

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 27, 1990

CERTIFIED MAIL

Juel and Michael Aikele
Rt. 1
Moore, ID 83255

Marshall Todd Perkes
Rt. 1 Box 110
Arco, ID 83213

#33172

RE: Order to Cease and Desist Irrigation of Lands within the SW1/4NW1/4 and SE1/4NW1/4, SEC. 5, TWP. 4N, RGE. 26E, B.M.

Gentlemen:

Department records indicate that the land in the above referenced 80-acre tract is included in three licensed water right and that the land is in a federal land set aside program. A further review of the Department's records indicate that a transfer of the licensed water rights has not been applied for.

The attached order to cease and desist requires that irrigation on the land not having a recorded water right be stopped until a right authorizing irrigation is obtained to allow irrigation of the land.

You have the right to have an administrative hearing before the department pursuant to Section 42-1701A, Idaho Code, if a request is received by the department no later than 15 days after the service of this order.

Please feel free to contact the department if you have questions.

Sincerely,

NORMAN C. YOUNG
Administrator

NCY:rf

c: Kent Foster
bc: Gary Slette

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF GROUNDWATER WITHOUT A VALID RIGHT FROM WELLS LOCATED IN SW1/4NW1/4 AND SE1/4NW1/4 SEC. 5, TWP. 4N, RGE. 26E, B.M. OWNED AND/OR CONTROLLED BY MARSHALL TODD PERKES, AND/OR JUEL AIKELE AND/OR MICHAEL AIKELE	ORDER TO CEASE AND DESIST

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the Department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The Department has issued licenses in connection with water right identification numbers 34-7080A, 34-7136 and 34-7169. The points of diversion for these licenses are two wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. (Perkes wells) and the place of use is within parts of Sec. 11, Twp. 3N, Rge. 25E, B.M.

2. On July 26, 1990, the owner of the wells, Marshall Todd Perkes, testified under oath before the Department that the lands to which the three licensed water rights are appurtenant are in a federal land set aside program and are not being irrigated.

3. Also on July 26, 1990, Juel Aikele testified under oath before the Department that his son, Michael Aikele, had been "loaned" the use of the Perkes well or wells and has been diverting and using water from the well or wells for irrigation purposes.

4. Department records do not show that water diverted from the Perkes wells is appurtenant to any land other than the land in the set aside program which presently is not being irrigated.

5. The Director of the Department has not given approval to divert groundwater from the Perkes wells onto any land other than the land licensed under the rights.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, provides as follows:

> If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water source without obtaining a valid right to do so or is applying water not in conformance with the conditions of a valid right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right.

2. Section 42-229, Idaho Code, provides that: "The right to the use of ground water of this state may be acquired only by appropriation."

3. Water diverted for use from the Perkes wells for use on land other than licensed under the rights or otherwise approved by the department is in violation of the statutes of the state of Idaho and Water Appropriation Rule 3,1,1.

4. The illegal diversion of the public waters of the state of Idaho must be stopped or mitigated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. Section 42-352, Idaho Code, provides that:

> Any person who wilfull violates any cease and desist order issued under Chapter 3, Title 42, Idaho Code, after the same has been served upon him shall be subject to a civil penalty not to exceed one hundred dollars ($100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs.

6. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

7. The Director should issue a Cease and Desist Order pursuant to the authority of Section 42-351, Idaho Code.

ORDER

IT IS THEREFORE hereby ORDERED, that Marshall Todd Perkes and/or Juel Aikele and or Michael Aikele immediately CEASE AND DESIST the diversion and use of water from the Perkes wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. for the irrigation of any lands to which the rights are not appurtenant until such approval is obtained from the Director of the Department of Water Resources.

Dated this 27TH day of July, 1990.

R. KEITH HIGGINSON
Director

United States Department of Agriculture

Farmers [redacted]ome Administration

P.O. Box 1783
Idaho Falls, I[redacted]3403-1783

July 26, 1990

Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Proposed transfer of Groundwater License: 34-10804
34-7136
34-7149

Dear Mr. Saxton:

It has come to this offices attention that M. Todd Perkes has proposed to transfer the above mentioned water rights

Farmers Home Administration (FmHA) currently has a lien on all of the above water rights (see attachment).

On July 23, 1990, during our telephone conversation, you stated that transfer applicants must present IDWR with waivers from all lienholders stating the approve or consent to the water right transfers.

As of this date, M. Todd Perkes has not applied or requested from FmHA approval or consent to transfer the above water rights. Approval or consent has not been given.

The transfer of water rights from FmHA mortgaged property without approval or consent is a violation of M. Todd Perkes loan and security agreements.

FmHA is requesting that the application to transfer the above water rights be suspended. If M. Todd Perkes requests FmHA concurrence, the request will be considered and a decision by FmHA will be made at that time.

The Arco County Office Address is: FmHA
P.O. Box 57
Arco, Id[redacted]

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Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington D.C., 20250

If you have any questions, please do not hesitate to contact the Arco County Office at (208) 527-3441.

Sincerely,

DAVID A. FLESHER
Acting County Supervisor

Attachment

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USDA-FmHA
Form FmHA 427-1 ID
(Rev. 12-12-77)

Position 5

OFFICIAL AGENCY FILE COPY

REAL ESTATE MORTGAGE FOR IDAHO

THIS MORTGAGE is made and entered into by M. TODD PERKES and NORMA L. PERKES, Husband and Wife,

residing in Butte County, Idaho, whose post office address is Route #1, Box 110, Arco, Idaho, 83213 herein called "Borrower," and

WHEREAS Borrower is indebted to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, herein called the "Government," as evidenced by one or more promissory note(s) or assumption agreement(s), herein called "note," which has been executed by Borrower, is payable to the order of the Government, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by Borrower, and is described as follows

Date of Instrument	*Principal Amount*	*Annual Rate of Interest*	*Due Date of Final Installment*
March 19, 1979	$ 7,400.00	8½%	March 19, 1984
March 19, 1979	$392,600.00	8½%	March 19, 2019

And the note evidences a loan to Borrower, and the Government, at any time, may assign the note and insure the payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949;

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity mortgage to secure the Government against loss under its insurance contract by reason of any default by Borrower

NOW, THEREFORE, in consideration of the loan(s) and (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, including any provision for the payment of an insurance or other charge, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described, and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement, Borrower does hereby grant, bargain, sell, convey, mortgage, and assign unto the Government the following property situated in the State of Idaho,

County(ies) of BUTTE

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TRACT 1:

Township 4 North, Range 26 East, Boise Meridian, Butte County, Idaho:

Parcel 1:
Section 27: A parcel of land in the NW¼ of Section 27, more particularly described as follows: Beginning at the center of Section 27; thence West 1320 feet; thence North 240 feet; thence West 1320 feet; thence South 240 feet; thence East 1320 feet;
ALSO, a parcel of land in the NW¼ of Section 27, more particularly described as follows: Beginning at the center of Section 27; thence West 1320 feet; thence North 840 feet more or

less to the South line of Thomas Perkes property described in deed recorded February 12, 1976, as instrument no. M-4691; thence East 1320 feet; thence South 840 feet more or less to the point of beginning.
The SW¼, W½SE¼, SE¼SE¼, and that portion of the SW¼NW¼ being South and West of the old Moore-Arco Highway.
Section 35: W½W½.
Section 34: ALL

Township 3 North, Range 26 East, Boise Meridian, Butte County, Idaho:

Section 3: NW¼NE¼ (Lot 2).

Parcel 2:
Township 4 North, Range 26 East, Boise Meridian, Butte County, Idaho:

Section 26: That portion of the SW¼SW¼ being South and West of the Old Moore-Arco Highway.

TRACT 2:

Township 3 North, Range 25 East, Boise Meridian, Butte County, Idaho:
(SEE ATTACHED EXHIBIT "A")

together with all rights, interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein-all of which are herein called "the property";

TO HAVE AND TO HOLD the property unto the Government and its assigns forever in fee simple.

BORROWER for himself, his heirs, executors, administrators, successors and assigns WARRANTS THE TITLE to the property to the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyances specified hereinabove, and COVENANTS AND AGREES as follows

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay to the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by him when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate

(5) All advances by the Government as described by this instrument, with interest, shall be immediately due and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby No such advance by the Government shall relieve Borrower from breach of his covenant to pay Any payment made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines

(6) To use the loan evidenced by the note solely for purposes authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments

(8) To keep the property insured as required by and under insurance policies approved by the Government and at its est, to deliver such policies to the Government.

Section 11: N½, SE¼.

TOGETHER With all water, water rights, ditch and ditch rights and ground water appurtenant thereto, including, but not limited to, State of Idaho Water Permits #34-7169, 34-7080, 34-7060, 34-7029 and 34-7136.

Together with all irrigation equipment of every kind and character and additions thereto and replacements thereof now owned and hereafter acquired by the borrower, and used in the irrigation of the above premises, especially, but not limited to, the following:

1 Pivot, Valley, Mod. 5171 (10 tower), #19132
1 Pivot, Valley, Mod. 5171 (10 tower)
1 Motor, U.S. Electric, 200 h.p., #C1516-01-58885-02930
1 Pump, Aurora, 200h.p.
2 Power Panels
200' Mainline (buried), Steel 22"
3960' Mainline (buried), Steel 8"
8 Gunds-Spray, Nelson 100's
1 Motor, G.E., Electric 250h.p., #BMJ204115
1 Pump, Aurora 250 h.p.
1 Power Panel
2640' Mainline (buried), Steel 12"
1 Motor, U.S. Motors, 200 h.p., #1387258
1 Pump, Welline, 200 h.p., #45957
1 Power Panel
4 Wheel lines A&M, ¼ mile, 5"
1 Motor, G.E., Electric 150 hp, #DKJ403172
1 Pump, single-Layne Bowle, 150 hp, #45331
1 Power Panel, G.E.
1 Wheel Line A&M, Mod. 113000, 5", #3462
1 Motor, G.E. 250 hp Electric, #KKJ1023116
1 Pump, 250 hp
1 Power Drive, A&M, #3851
1 Power Drive, A&M, #3449

together With all grazing rights, licenses, leases, permits and privileges, and extensions and renewals thereof, now and hereafter owned, held, controlled or used by the Borrower in the operation of the above premises, including, but not limited to, 94 ~~head~~ AUMs TP of cattle from May 16 to August 15 on George Allotment, administered by the United States Department of the Interior, Bureau of Land Management. NP

SUBJECT TO:

Right of Way Easement granted to Lost River Electric Cooperative, Inc., by Marshall Todd Perkes, recorded January 2, 1975, as filing no. M-3835, records of Butte County, Idaho.

MTP NLP

Rights of the public in and to that portion of the above described premises falling within roads or highways.

A Financing Statement executed by M. Todd Perkes in favor of Commodity Credit Corporation, filed December 1, 1978, as instrument no. 3844, records of Butte County, Idaho.

There is an easement and right of way granted to United States along the North side of NE¼NE¼ of Section 11, Township 3 North, Range 25 East, Boise Meridian, by instrument recorded in Book 7 of Contracts, page 195, records of Butte County, Idaho.

Easement for irrigation water between Timberline Beef, Inc., and Marshall Todd Perkes and Norma L. Perkes filed March 29, 1976, as filing no. M-4783, records of Butte County, Idaho.

A Financing Statement executed by Marshall T. Perkes and Norma L. Perkes, husband and wife, in favor of United Denver Leasing Company, filed April 14, 1977, as instrument No. 2932, records of Butte County, Idaho.

Mortgage dated December 1, 1978, executed by M. Todd Perkes and Norma Perkes, his Wife, to LaMar Hult and Betty Hult, his Wife, to secure the payment of $35,000.00 and interest, recorded December 6, 1978, as filing no. M-7274, records of Butte County, Idaho.

MTP NLP

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(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner, comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe; and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

(10) To comply with all laws, ordinances, and regulations affecting the property.

(11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

(12) Neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as mortgagee hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.

(13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in any supplementary agreement are being performed

(14) The Government may extend and defer the maturity of and renew and reamortize the debt evidenced by the note or any indebtedness to the Government secured hereby, release from liability to the Government any party so liable thereon, release portions of the property from and subordinate the lien hereof, and waive any other rights hereunder, without affecting the lien or priority hereof or the liability to the Government of Borrower or any other party for payment of the note or indebtedness secured hereby except as specified by the Government in writing

(15) If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal land bank or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan

(16) Default hereunder shall constitute default under any other real estate, or under any personal property or other security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.

(17) SHOULD DEFAULT occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should any one of the parties named as Borrower die or be declared an incompetent, a bankrupt, or an insolvent, or make an assignment for the benefit of creditors, the Government, at its option, with or without notice, may (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this mortgage, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, (d) foreclose this instrument as provided herein by law, (e) require Borrower to surrender to the Government any and all abstracts of title then owned by Borrower covering all or any part of the property, and (f) enforce any and all other rights and remedies provided herein or by present or future law.

(18) The proceeds of foreclosure sale shall be applied in the following order to the payment of (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower At foreclosure or other sale of all or any part of the property, the Government and its agents may bid and purchase as a stranger and may pay the Government's share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

(19) Borrower agrees that the Government will not be bound by any present or future State laws, (a) providing for valuation, appraisal, homestead or exemption of the property, (b) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action may be brought, (c) prescribing any other statute of limitations, (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower Borrower expressly waives the benefit of any such State laws Borrower hereby relinquishes, waives, and conveys all rights, inchoate or consummate, of descent, dower and curtesy

(20) If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for him will, after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion, sex, or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not comply with or attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, sex, or national origin

(21) This instrument shall be subject to the present regulations of the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

(22) Notices given hereunder shall be sent by certified mail, unless otherwise required by law, addressed, unless and until some other address is designated in a notice so given, in the case of the Government to Farmers Home Administration, United States Department of Agriculture, at Boise, Idaho 83702, and in the case of Borrower to him at the address shown in the Farmers Home Administration Finance Office records (which normally will be the same as the post office address shown above).

(23) WAIVER. THE BORROWER ACKNOWLEDGES AND AGREES THAT IF HE DEFAULTS A NONJUDICIAL FORECLOSURE OF THE PROPERTY MAY BE CONDUCTED WITHOUT A HEARING OF ANY KIND, THE BORROWER HEREBY WAIVES ANY RIGHTS HE MAY HAVE TO ANY SUCH HEARING. NEVERTHELESS THE REGULATIONS OF THE FARMERS HOME ADMINISTRATION IN EFFECT AT THE TIME SUCH FORECLOSURE IS STARTED MAY PROVIDE A MEETING AND THE GOVERNMENT WILL FOLLOW THESE REGULATIONS.

(24) At the option of the Government this mortgage may be foreclosed by action or advertisement as provided by statute, and Borrower hereby irrevocably vests in the Government the statutory power of sale and constitutes and appoints the Government his agent and attorney in fact to sell the property, after due notice, at public auction to the highest bidder, for cash or secured credit at the option of the Government, and to give the purchaser a warranty deed binding upon Borrower and all claiming under him.

(25) Borrower has assigned or waived or will immediately on request of the Government, assign or waive in favor of the Government all grazing privileges, permits, licenses, or leases appurtenant to or used in connection with said land, and Borrower further covenants and agrees to produce renewals thereof prior to their expiration and to pay all fees and charges and to perform all acts and do all things necessary to keep and preserve all said grazing rights and renewals thereof, and in the event of the failure of Borrower to do any of these things the Government may do so on behalf of Borrower, including advancing such sums as may be necessary for this purpose, and such funds advanced shall be secured by this instrument

(26) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable

IN WITNESS WHEREOF, Borrower has hereunto set Borrower's hand(s) and seal(s) this 19th day of March, 19 79.

No. [illegible]

FILED

MAR 18 1979

M. Todd Perkes
M. Todd Perkes

Norma L. Perkes
Norma L. Perkes

ACKNOWLEDGMENT

BUTTE COUNTY, IDAHO

STATE OF IDAHO } ss:

COUNTY OF Butte

On this 19th day of March, in the year of 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared M. TODD PERKES and NORMA L. PERKES,

known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same as their free act and deed for the uses, purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the said date.

(NOTARIAL SEAL)

William G. Carlson
William G. Carlson
Notary Public, residing at Arco, Idaho

My commission expires: Lifetime
Bond expires: 11/2/79

RECORDED

July 23, 1990

Dave Flesher
FmHA
Box 656
Arco, ID 83213

Dear Mr. Flesher:

Re: Water Right Nos. 34-7080A, 34-7136 and 34-7169
Todd Perkes, Juel Aikele & Michael Aikele

Pursuant to your request, enclosed is a copy of the Application for Transfer of Water Rights and a copy of the Notice of Hearing.

If the department can assist you further, please contact us.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosures

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 27, 1990

CERTIFIED MAIL

#33171

Juel and Michael Aikele
Rt. 1
Moore, ID 83255

Marshall Todd Perkes
Rt. 1 Box 110
Arco, ID 83213

RE: Order to Cease and Desist Irrigation of Lands within the SW1/4NW1/4 and SE1/4NW1/4, SEC. 5, TWP. 4N, RGE. 26E, B.M.

Gentlemen:

Department records indicate that the land in the above referenced 80-acre tract is included in three licensed water right and that the land is in a federal land set aside program. A further review of the Department's records indicate that a transfer of the licensed water rights has not been applied for.

The attached order to cease and desist requires that irrigation on the land not having a recorded water right be stopped until a right authorizing irrigation is obtained to allow irrigation of the land.

You have the right to have an administrative hearing before the department pursuant to Section 42-1701A, Idaho Code, if a request is received by the department no later than 15 days after the service of this order.

Please feel free to contact the department if you have questions.

Sincerely,

NORMAN C. YOUNG
Administrator

NCY:rf

c: Kent Foster
bc: Gary Slette

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF GROUNDWATER WITHOUT A VALID RIGHT FROM WELLS LOCATED IN SW1/4NW1/4 AND SE1/4NW1/4 SEC. 5, TWP. 4N, RGE. 26E, B.M. OWNED AND/OR CONTROLLED BY MARSHALL TODD PERKES, AND/OR JUEL AIKELE AND/OR MICHAEL AIKELE	ORDER TO CEASE AND DESIST

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the Department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The Department has issued licenses in connection with water right identification numbers 34-7080A, 34-7136 and 34-7169. The points of diversion for these licenses are two wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. (Perkes wells) and the place of use is within parts of Sec. 11, Twp. 3N, Rge. 25E, B.M.

2. On July 26, 1990, the owner of the wells, Marshall Todd Perkes, testified under oath before the Department that the lands to which the three licensed water rights are appurtenant are in a federal land set aside program and are not being irrigated.

3. Also on July 26, 1990, Juel Aikele testified under oath before the Department that his son, Michael Aikele, had been "loaned" the use of the Perkes well or wells and has been diverting and using water from the well or wells for irrigation purposes.

4. Department records do not show that water diverted from the Perkes wells is appurtenant to any land other than the land in the set aside program which presently is not being irrigated.

5. The Director of the Department has not given approval to divert groundwater from the Perkes wells onto any land other than the land licensed under the rights.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, provides as follows:

> If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water source without obtaining a valid right to do so or is applying water not in conformance with the conditions of a valid right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right.

2. Section 42-229, Idaho Code, provides that: "The right to the use of ground water of this state may be acquired only by appropriation."

3. Water diverted for use from the Perkes wells for use on land other than licensed under the rights or otherwise approved by the department is in violation of the statutes of the state of Idaho and Water Appropriation Rule 3,1,1.

4. The illegal diversion of the public waters of the state of Idaho must be stopped or mitigated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. Section 42-352, Idaho Code, provides that:

> Any person who wilfull violates any cease and desist order issued under Chapter 3, Title 42, Idaho Code, after the same has been served upon him shall be subject to a civil penalty not to exceed one hundred dollars ($100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs.

6. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

7. The Director should issue a Cease and Desist Order pursuant to the authority of Section 42-351, Idaho Code.

ORDER

IT IS THEREFORE hereby ORDERED, that Marshall Todd Perkes and/or Juel Aikele and or Michael Aikele immediately CEASE AND DESIST the diversion and use of water from the Perkes wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. for the irrigation of any lands to which the rights are not appurtenant until such approval is obtained from the Director of the Department of Water Resources.

Dated this 27TH day of July, 1990.

R. KEITH HIGGINSON
Director

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:
Juel & Michael Aikele
Rt. 1
Moore, ID 83255

4. Article Number
3171

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X

7. Date of Delivery
7-31-90

8. Addressee's Address *(ONLY if requested and fee paid)*
Rt. 1 Box 63 D
Moore, ID. 83255

Water A/loc.

PS Form **3811**, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

NOV 01 1990

4. Article Number
33499

Type of Service:
- ☐ Registered
- ☒ Certified
- ☐ Express Mail
- ☐ Insured
- ☐ COD
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

8. Addressee's Address *(ONLY if requested and fee paid)*

5 Signature — Address
X Kim M

6 Signature — Agent
X

7. Date of Delivery
7-16-90

MICROFILMED

34-7080

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

U[redacted] STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RECEIVED

JUL 18 1990

Department of Water Resources

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Sender's name, address, and ZIP Code in the space below.

MICROFILMED

NOV 01 1990

DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Lawrence Babcock
Box 66
Moore, ID 83255

NOV 01 1988

4. Article Number

P 033497

Type of Service:

- ☐ Registered
- ☒ Certified
- ☐ Express Mail
- ☐ Insured
- ☐ COD
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5. Signature — Address

X Mamie Ba[illegible] DELIVERED

6. Signature — Agent

X

7. Date of Delivery

7-15-88

Addressee's Address *(ONLY if requested and fee paid)*

34-7080

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

U[redacted] STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Write Sender's name, address, and ZIP Code in the space below.

RECEIVED

JUL 20 1990

DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

Department of Water Resources

[redacted]**IDER:** Complete items 1 and 2 when additional services are desired, and complete items [redacted]nd 4

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Marshall Todd Perkes
Rt. 1 Box 110
Arco, ID 83213

4. Article Number
33172

Type of Service:
- ☐ Registered
- ☐ Insured
- ☒ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Address
X [redacted]

8. Addressee's Address *(ONLY if requested and fee paid)*

6. Signature — Agent
X

7. [redacted]te of Delivery
8-3-90

PS Form **3811**, Mar. 1988 ★ U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

MICROFILMED
NOV 01 1990

RECEIVED
AUG 6 1990

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 8372[illegible]

Department of Water Resources

AUG 8 1990 PM 83255

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Gary Slette
Nelson, Rosholt, Robertson,
Tolman & Tucker
Box 1906
Twin Falls, ID 83301

4. Article Number

33498

Type of Service:

- ☐ Registered
- ☐ Insured
- ☒ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5. Signature — Address

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address *(ONLY if requested and fee paid)*

34-7080

PS Form **3811**, Mar. 1988 * U.S.G.P.O. 1988-212-865 **DOMESTIC RETURN RECEIPT**

U[redacted] STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

MICROFILMED
NOV 01 1990

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO: Print Sender's name, address, and ZIP Code in the space below.

RECEIVED
JUL 18 1990

Department of Water Resources

DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

PS Form 3811, July 1983 447-845

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1, 2, 3 and 4.

Your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☒ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:

Todd Perkes &/or Juel &/or
Michael Aik
c/o Holden, Kidwell, Hahn & Crapo
Box 50130,
Idaho Falls, ID 83405

4. Type of Service: Article Number

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

P 033 496

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee

X

6. Signature – Agent

X

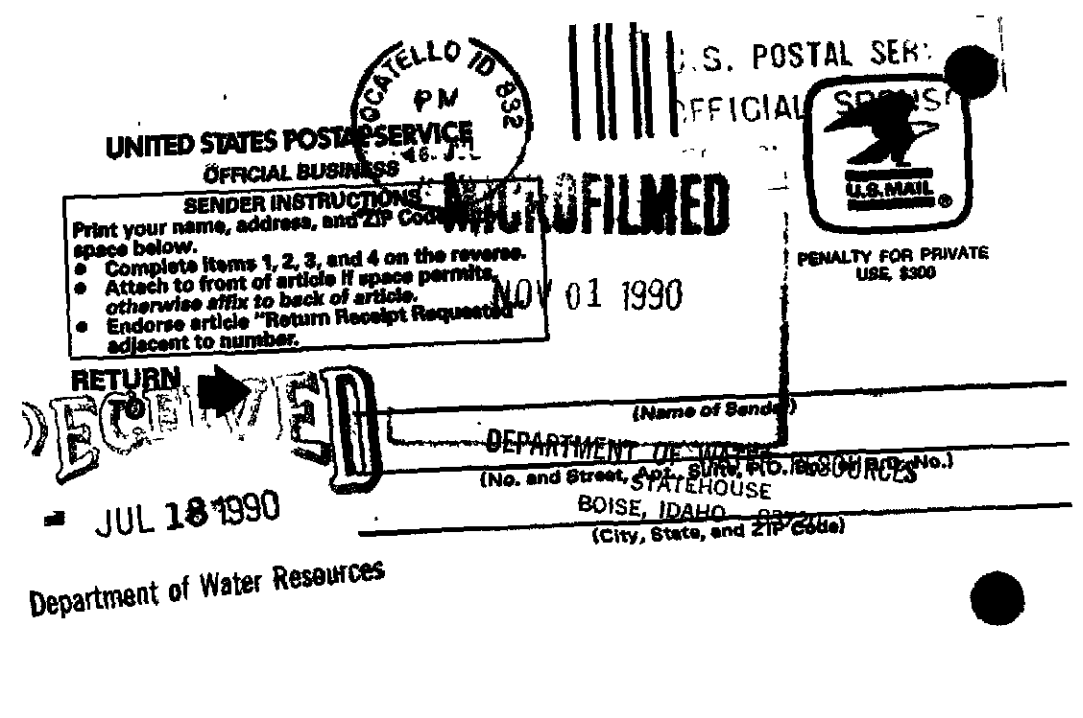
7. Date of Delivery

8. Addressee's Address *(ONLY if requested and fee paid)*

34-7080

RETURNED NOV 1990

IDAHO FALLS, ID EAGLE ROCK ANNEX JUL 16 1990 USPS


POCATELLO ID 832
PM
U.S. POSTAL SERVICE
OFFICIAL BUSINESS
SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, 3, and 4 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.
MICROFILMED
NOV 01 1990
U.S. MAIL
PENALTY FOR PRIVATE USE, $300
RETURN TO
(Name of Sender)
DEPARTMENT OF WATER RESOURCES
(No. and Street, Apt. Suite, P.O. Box or R.D. No.)
STATEHOUSE
BOISE, IDAHO
(City, State, and ZIP Code)
RECEIVED
JUL 18 1990
Department of Water Resources

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 13, 1990

RE: Transfer of Water Right Nos. 34-7080A/7136/7169

M. Todd Perkes &/or
Juel &/or Michael Aikele
c/o Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

CERTIFIED MAIL# 33496

Kent Foster
Holden, Kidwell, Hahn & Crapo
Box 50130
Idaho Falls, ID 83405

CERTIFIED MAIL# 33494
SEE FILE 34-2332 for returned certified card

Lawrence Babcock
Box 66
Moore, ID 83255

CERTIFIED MAIL# 33497

Gary Slette
Nelson, Rosholt, Robertson,
Tolman & Tucker
Box 1906
Twin Falls, ID 83301

CERTIFIED MAIL# 33498

Big Lost River Irrigation Dist.
Box 205
Mackay, ID 83251

CERTIFIED MAIL# 33499

Gentlemen:

Enclosed is a notice setting the time and place for a hearing regarding the above referenced transfer. The Magistrate Courtroom has been reserved for the hearing on July 26, 1990.

If you have any questions concerning this matter, please feel free to contact our office.

Sincerely,

Sharla Curtis

SHARLA CURTIS
Technical Records Specialist

Enclosure

cc: Eastern Region
Douglas Rosenkrance

MICROFILMED
NOV 01 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 3675 OF WATER RIGHTS 34-7080A, 34-7136 AND 34-7169 IN THE NAME OF M. TODD PERKES, JUEL AIKELE & MICHAEL AIKELE AND THE CEASE AND DESIST ORDER ISSUED BY THE DEPARTMENT ON JUNE 22, 1990	NOTICE OF HEARING

On February 14, 1990, M. Todd Perkes, Juel Aikele & Michael Aikele (applicants) filed application for transfer no. 3675 in connection with water right nos. 34-7080A, 34-7136 and 34-7169. The application was protested by numerous parties in the Big Lost River drainage.

On June 22, 1990, the Department of Water Resources (department) issued a Cease and Desist Order to Don A. Aikele, Juel Aikele and Michael Aikele (applicants) to cease and desist the irrigation of land within the S1/2SW1/4 Section 6, T3N, R26E,BM. Applicants have not ceased to irrigate this land.

The department has set this matter for combined hearing on the protested application for transfer and the cease and desist order. The hearing is scheduled for Thursday, July 26, 1990 at 9:30 a.m. in the Magistrate Courtroom in Arco, Idaho. The civil penalty provided in Section 42-352, Idaho Code, is an issue to be heard.

The hearing will be held in accordance with Chapter 2, Title 42, Section 42-1701A, Idaho Code, and the adopted rules of Practice and Procedure of the department. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 13th day of July, 1990.

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J HAHN
KENT W FOSTER
ROBERT E FARNAM
WILLIAM D FALER
STEPHEN E MARTIN
CHARLES A HOMER
GARY L MEIKLE
MICHAEL D CRAPO
GAYLE A SORENSON
DONALD L HARRIS
GREGOR S CHVISUK
RANDALL B REED
MARIE T FEELEY
ROBERT M FOLLETT

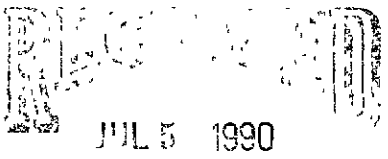
WEST ONE BANK BUILDING
P O BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W HOLDEN (1877-1967)
ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

R VERN KIDWELL OF COUNSEL

July 3, 1990



Norman C. Young, Administrator
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Order to Cease and Desist Irrigation of Lands within the S1/2 of the SW1/4 of Section 6, Township 3 North, Range 26 EBM.

Dear Mr. Young:

We have been asked to respond to your letter and the "Cease and Desist Order" of June 22, 1990, relating to lands being irrigated in the S1/2 of the SW1/4 of Section 6, Township 3 North, Range 26 East. As you know, we represent Mr. Don Aikele and Messrs. Juel and Michael Aikele as well, and this response is intended to be on behalf of all.

As we understand it, it is correct that some irrigation is taking place within this 80 acre tract. Mr. Don Aikele's pivot in the NW1/4 of Section 7 overlaps onto perhaps as much as 15 acres of this land and has done for many years. The larger pivot of Mr. Juel Aikele also covers up to as much as perhaps 30 acres of this land. Our clients are unaware of any technology that would permit them to somehow block out that portion of the sprinkling under the pivots which covers the particular 15 and 30 acre parcels.

We have been very much aware of this problem since the Show Cause Orders and the other activities which began late last summer and continued throughout the fall and winter. As we have understood our clients' version of the facts relating to the drilling and operation of the well under 34-7296 and the installation of this large pivot system, it has appeared to us

that this situation would give rise to one of the strongest cases for applying the doctrine of estoppel against IDWR in the event of any action in district court to enforce a Cease and Desist Order.

However because our clients would prefer to avoid expensive litigation if possible, pursuant to our recommendations last fall and winter, they went to substantial efforts to try to resolve the problem in another way. Mr. Todd Perkes had approximately 480 acres in Section 11 which he did not plan to irrigate in the near future. This land was supplied with water from two wells in Section 5, Township 4 North, Range 26 East under three water rights, Licenses Nos. 34-7080A, 34-7136, and 34-7169. The Aikeles were able to enter into a lease agreement with Mr. Perkes to lease these water rights so as to have an alternative to an injunction proceeding in district court.

An application for transfer was filed to transfer the point of diversion for the three Perkes rights to the 34-7296 well, and the place of use from the 480 acres in Section 11, Township 3 ~~South~~, Range 25 East to a similar number of acres in Section 6, Township 3 ~~South~~ North, Range 26 East, particularly including the 80 acres referred to in your June 22nd letter and order. When the application was filed we virtually begged IDWR to expedite the processing and we see two subsequent letters in our file to IDWR again expressing our sense of urgency regarding the processing.

Because of the unique facts of this matter (portions of the land is under the pivots) this order potentially affects several hundred acres, not just the 80 you refer to. It seems to us that the processing of the pending application for transfer makes much more sense than an injunction proceeding to enforce a Cease and Desist Order which we must defend, at least in part, on an estoppel theory.

We realize that many protests have been filed, but that should not be too surprising considering the status of water rights issues in this basin. At least we do not think the issue of supplmental or secondary versus primary water rights, or the issue of direct interference with some other specific ground or surface water right is involved here. The licenses in question have been used to irrigate land further west and

south of this 80 acres and the well from which the water is withdrawn is 3 to 4 miles further south than the wells previously used. We are not talking about taking more water from the aquifer than the licensed rights allow or at some location that creates any greater impact (in fact probably less of an impact) than when the wells in Section 5 are pumped. We see no significant issues of injury, expansion or local public interest raised by the pending application for transfer or the protests filed thereto. We would guess it would be a relatively simple matter to complete the processing and resolve the problem which we have all known about for many months.

If we can provide additional information, please feel free to call upon us at your convenience.

Your very truly,

Kent W. Foster

0022C/srr

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

June 22, 1990

Don A. Aikele
Rt. 1, Box 60
Moore, Idaho 83255

Juel and Michael Aikele
Rt. 1
Moore, Idaho 83255

RE: Order to Cease and Desist Irrigation of Lands within the S½ of the SW¼, T3N, R26E, B.M.

Gentlemen:

Department records indicate that the land in the above referenced 80 acre tract is included in two applications pending before the department seeking authorization to irrigate the land from a ground water source. These two applications (34-7296, Michael and Juel Aikele, and 34-7482, Don A. Aikele) have not been approved and diversion and use of water is not authorized pursuant to the applications. A further review of the department records did not indicate that other approved rights or claims authorize irrigation of the land in this 80 acre tract.

The attached order to cease and desist requires that irrigation on the land not having a recorded water right be stopped until a right authorizing irrigation is obtained to allow irrigation of the land.

You have the right to have an administrative hearing before the department pursuant to section 42-1701A, Idaho Code, if a request is received by the department no later than 14 days after the service of this order.

Please feel free to contact the department if you have questions.

Sincerely yours,

Norman C Young by Judi Schultz

NORMAN C. YOUNG
Administrator

NCY:js
cc: Kent Foster
Gary Slette

RECEIVED
NOV 21 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF UNAUTHORIZED USE OF WATER TO IRRIGATE IN THE S1/2SW1/4, SEC. 6, TWP. 6N, RGE. 26E B.M. (DON A. AIKELE, JUEL AIKELE AND MICHAEL AIKELE)	ORDER TO CEASE AND DESIST

The Director of the Department of Water Resources (department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The above named persons have submitted applications for permit to irrigate all or part of the land in the S1/2SW1/4, Sec. 6, Twp. 3N, Rge. 26E, B.M. located in Butte County, Idaho. Land in this 80-acre tract is located in the requested place of use for Application No. 34-7296 (Juel and Michael Aikele) and Application No. 34-7482 (Don A. Aikele).

2. The Director of the department has not completed processing of these applications to appropriate water and has not authorized diversion and use of water as proposed in the applications.

3. Field investigation by personnel of the department on June 21, 1990, determined that water was being used for irrigation of growing crops on all or part of the land in the S1/2SW1/4, Sec. 6, Twp. 3N, Rge. 26E, B.M.

4. Authorization to irrigate the land in the S1/2SW1/4, Sec. 6, Twp. 3N, Rge. 26E, B.M. is not included in any other water right of record in the department nor has any right to divert and use water on this tract of land been claimed in the Snake River Basin Adjudication.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, provides as follows:

> If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department

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of water resources may file an action seeking injunctive relief or may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right.

2. Section 42-229, Idaho Code, provides that: "The right to the use of ground water of this state may be acquired only by appropriation."

3. The illegal diversion of the public waters of the state of Idaho must be stopped or mitigated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

4. Section 42-352, Idaho Code, provides that:

> Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty to be imposed by the director of the department of water resources not to exceed one hundred dollars ($100) per diversion for each calendar day or any part of a calendar day following service of the cease and desist order in which the illegal diversion or use of water occurs.

5. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

6. Issuance of a Cease and Desist Order by the Director is appropriate to assure that diversion and use of water does not occur as proposed in the above captioned applications in violation of the provisions of Section 42-351, Idaho Code.

ORDER

IT IS HEREBY ORDERED, that upon service of this order that the applicants CEASE AND DESIST the irrigation of the lands for which the right to irrigate does not exist until such approval is received from the Director to appropriate or otherwise use water for the irrigation of the lands.

DATED this 22ND day of June, 1990.

R. KEITH HIGGINSON
Director

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169 PERKES & AIKELE
No. 34-0170/0556 HILLCREEK PROP.

Mr. Lawrence Babcock
Box 66
Moore, ID 83255

Dear Mr. Babcock:

On May 7, 1990, you brought to our office signed petitions protesting the above referenced water right transfers. You have been selected to represent the individuals on these petitions. Therefore, any correspondence concerning these applications will be directed to you. We are asking that you keep these individuals notified of any proceedings concerning these transfers. For your convenience, I have enclosed copies of the petitions submitted.

This letter also acknowledges receipt of the protests filed against the above referenced application for transfers. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfers?

2. Does the change constitute an enlargement in the use of the original rights?

3. Will the proposed use under these transfers conflict with the local public interest?

The protestants must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

We appreciate your support in this matter. If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

RECEIVED
MAY 07 1990

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169
PERKES & AIKELE

Rita M. Lundy
Assistant Secretary-treasurer
Big Lost River Irrigation District
P.O. Box 205
Mackay, ID 83251

Dear Ms. Lundy:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items considered by the Department at a conference and/or hearing in either approving or denying an application for transfer:

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Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

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MAY [illegible] 1989

Department of Water Resources
Eastern District Office

APPLICATION FOR TRANSFER OF

WATER RIGHT NO. 34-7080A/34-7136/34-7169

WATER DISTRICT 34

WATERMASTER Doug Rosenbaum

DATE: 4/26/89

COMMENTS: I have no information on these wells so I can not recommend this at this time.

___ I do endorse approval of this change.

___ I do not endorse approval of this change.

I recommend the following conditions of approval:

Doug Rosenbaum
Watermaster

[illegible]

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169 PERKES & AIKELE
No. 34-0170/0556 HILLCREEK PROP.

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Box 66
Moore, ID 83255

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Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

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May 17, 1990

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3. Will the proposed use under these transfers conflict with the local public interest?

The protestant must be prepared to present proof of the allegations involving one or more of the items. You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office

May 17, 1990

RE: Application for Transfer No. 34-7080A/7136/7169
M. TODD PERKES, JUEL AIKELE & MICHAEL AIKELE

Mr. Kent Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Enclosed please find copies of protests filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?

2. Does the change constitute an enlargement in the use of the original right?

3. Will the proposed use under this transfer conflict with the local public interest?

The applicant must be prepared to present evidence and/or testimony addressing each of the three items should an additional hearing be necessary. You will be notified at a later date as to the time and place set for conference and/or hearing.

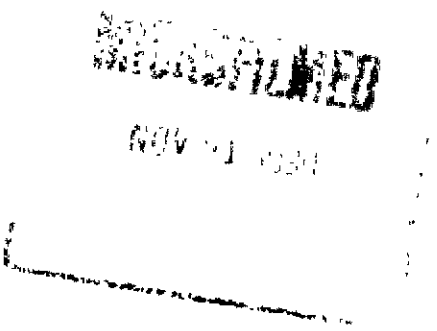
If we may be of further assistance, please contact us.

Respectfully submitted,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

cc: IDWR - State Office



Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

Dear Mr. Higginson:

We, the undersigned, do hereby protest the attached applications for transfer for at least, but not limited to the following reasons;

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4. We have an over-appropriation of the total water supply in the basin.

5. These transfers are against the Public interest.

NAME	ADDRESS
Jerr. B. Guthrie	Box 319 Arco, Id. 83213
M. T. Guthrie	Arco
W. J. McKnight	Mackay
Ray Skaten	arco
Edythe Moore	Arco
Wm. T. McKinley	arco
Leonard L. Davis	Arco
Jessie A. Davis	ARCO.
Louis Tyson	Arco
Dave Troy	~~Idaho~~ Arco, Idaho
Kenneth Gilbert	Arco Idaho.
Chris P. Goodson	Arco, Ida.
Lee Ray Byington	Arco Idaho
Lula Byington	Arco Idaho
Lennis Clay	Arco
James B. Hochhalter	Arco
Ida Mae Hochhalter	Arco
Wanda Holt	Arco
Duane Holt	arco
Jerry H. Thomas	Arco.
Sharon H. Thomas	Arco
[illegible]	Arco

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

Notice is hereby given that M TODD PERKES, JUEL & MICHAEL ARELE have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. The right sought to be changed is evidenced by LICENSE NO'S 34-7080A, 34-7136, & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW SENW S 5 T 3N R 25E, BUTTE COUNTY
NO. 34-7080A
AMOUNT: 2.67 CFS
PRIORITY: SEPT. 23, 1974
The water is used to irrigate 160 acres from April 1 to November 1 within the NE¼ S 11 T 3N R 25E, B M.
NO. 34-7136
AMOUNT: 5.5 CFS
PRIORITY: MARCH 26, 1976
The water is used to irrigate 160 acres from April 1 to November 1 within the NW¼ S 11 T 3N R 25E, B.M.
NO. 34-7169
AMOUNT: 4.48 CFS
PRIORITY: JAN. 6, 1977
The water is used to irrigate 160 acres from April 1 to November 1 within the SE¼ S 11 T 3N R 25E, B M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the S½N½ S½ S 6 T 3N R 26E, B.M

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson
Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

MAY
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Eastern

Pam Jensen P.O. Box 321 Butte City

Lloyd E. Jensen Moore

Phyllis J. Jones Moore, Id.

Byron Wheeler Moore, ID.

Earl Keller Moore

Lorene Keller Moore

Cary E. Foster Moore Ida

Nellie Scruton Moore, ID

Bonnie Larson Moore Id

Chris A. Hays Moore, ID.

Phil Knapp Moore, ID

Elizabeth Knapp Moore, ID

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Department of Water Resources
Eastern District Office
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Department of Water Resources
Eastern District

Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
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NAME ADDRESS

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R. Keith Higginson
Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

Dale Smith	Rt #1 Box 22	Moore, Idaho 83255
Virgil & Hail	Box 454	Moore Idaho 83255
Clara V. Hail	Box 454	Moore, Id. 83255
Warren Brown		Arco Ida 83213
Clover Brown		Arco Ida 83213
David Speak		Moore Ida 83255
Albert C Babcock		Moore, Idaho 83255
Mary L Babcock		Moore, Idaho 83255
[illegible]		Moore, Idaho 83255
Lydia Thorngren		Moore, Id. 83255
[illegible]		Moore, Ida 83255
Jean McAffee		Moore Idaho 83255
[illegible]		[illegible] 83255
Alvin J. Roessner		Arco, Idaho 83213
Gertrude Roessner		Arco Ida 83213
William A. Dyer		Arco, Ida. 83213
Claudene Dyer		Arco, Ida 83213
Lorie B. Lutcshg		Arco Idaho 83213
Bonnie F. Lutcshg		Arco, Id. 83213
Diana L. Conquest		Moore, Id. 83255
Dick Beverland	" "	" "
Jessie E. Beverland	Moore Id	208
[illegible]	Moore Id	83255

Cathryn J Dee	J Moore	83255
Janice M. Burch	Moore	83255
James H. Burch	Moore	83255
Judy Crowley	Moore	83255
Susan R. Haney	Moore	83255
M. Duane Haney	Moore	83255
David Wanstrom	Moore	83255
Kathy Winstrom	Moore	83255
Sam A Jackson	Moore Ld	83255
Renie Jackson	Moore Ld	83255
Patsy Booker	Moore, Ida	83255
Nina Schuck	Moore Ida	

MAY - 1 1990
Department of Water Resources
Eastern District Office

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Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

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NAME	ADDRESS
Laurene Babcock	Moore, Idaho
Gerald Stewart	Moore Idaho
Lyle Stewart	Moore Idaho
Craig Stewart	Moore, Idaho
Elden Reynolds	Moore Idaho
Lois Jean Reynolds	Moore Idaho
Raymond Moby	Moore Idaho

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

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Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

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MAY - [illegible]
Department of Water Resources
Eastern District Office

Idaho Dept. of Water Resources
150 Shoun, Ave, Idaho Falls, Id. 83401
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Director

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NAME	ADDRESS	
Lewis Rothwell	Rt 1 Box 405	Arco, Ida 83213
Dany Hendrik	Rt #1 Box 82	Moore, Ida
Elwyn Malpeus	Box 553	ARCO Idaho
Ted R. Walker	Box 32	Arco, Idaho
Verna Mathews	Box 553	Arco, Idaho
Bill Stewart	Box 408	Arco, Ida
Dorothy Stuart	"	"
Ed Bechtle	Box 6	arco Id
Leo Kitmongk	Box 392	arco, Ida
Hall Hammon	Box 744	Arco
Larry Rothwell	Box 633	moore
Oscar Rolland Romero	Box 639	Arco Idaho
Luther Wynger	Box 341	arco Idaho
Merlin F Phillips	Rt Box 442	arco Idaho
Anthony E. Madsen	Rt #1 Box 446	Arco, Idaho
Curtis E Reay	Box 313	Arco Id 83213
D Hamilton	P.O. Box 211	Arco Id 83213-0211
Watt Westemeier		
D.L. Maynard	P.O. Box 293	arco Id 83213
Eldon Maynard	P.O. Box 293	Arco, Ida. 83213
Theron L. Anderson	P.O. Box 258	Arco Idaho 83213
Frances A. Anderson	Rt. 1 Box 258	Arco, Id. 83213

1.

Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

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W. Kent Dempsey	Arco Idaho 83213
Robert G. Hogan	Arco Idaho 83213
J. M. Gonzales	Arco Idaho 83213
Frank L. Gomez	Moore Idaho 83255
Jim Porter	Moore Idaho 83255
Jay Stewart	Moore Idaho 83255
Wendell J. Andersen	POBox 2 ARCO IDAHO 83213
Mattie C Andersen	arco Id 83213
Curtis Ray	PO BOX 313
Joel L Andersen	Arco Id 83213
[illegible]	Moore, Id 83255
[illegible]	[illegible]
Alan Wheeler	Moore Idaho
Laurence R. Anderson	Moore, Idaho 83255

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R. Keith Higginson
Director

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MAY - 7 1990

Department of Water Resources
Eastern District Office

Idaho Dept. of Water Resources
150 Shoup, Ave, Idaho Falls, Id. 83401
R. Keith Higginson Director

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NO. 34-7169
AMOUNT: 4.48 CFS
PRIORITY: JAN. 6, 1977
The water is used to irrigate 160 acres from April 1 to November 1 within the SE¼ S 11 T 3N R 25E, B M.

TO BE CHANGED AS FOLLOWS:
The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the S½N½ S½ S 6 T 3N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID 83401, on or before MAY 7, 1990.

R. Keith Higginson
Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

NAME	ADDRESS
Lester Braswell	Arco Idaho
Dennis Braswell	Arco Idaho
Trudy Braswell	Arco Idaho
Dan Braswell	arco Idaho
John M. Morgan	Rt. 1 Box 219 - ARCO, IDAHO
Linda Morgan	Rt 1 Box 219, Arco, Idaho 83213
George Stanhill	Rte 1 Box 220 Arco ID.
Lewis Corgatelli	Rte 2 Box 209 Arco Id.
Adell Corgatelli	Route 1 Box 209 Arco Id.
Nancy Hughes	R # 1 Box 193 arco, Id.
Barbara Thornton	RT 1 Box 207 arco, Id
Robert Thornton	RT 1 Box 207 arco, Idaho
Clyde Dunbar	Box 83 Arco Idaho
Judith Kleckner	Box 513 Arco Idaho
L. K. Reichman	Box 513 Arco, Idaho
Wesley F. Watson	Box 546 Arco, ID.
Susan Worrell	Rt 1 Moore, Id
Colin A Whitehead	RR #1 Box 161 ARCO. ID.
Lonnie Lee	Box 326 Arco Id.
Sharon Larson	Rt. 1 Box 289 arco, Id.
Earl Larson	RT 1 Box 289 arco Id.
Tom Thornton	RR #3, arco Idaho
Arco O'Connell	Box 300 arco Idaho

NOV 01 1990

Big Lost River Irrigation District
P. O Box 205
MacKay, ID 83251

April 28,1990

RECEIVED
MAY - 2 1990
Department of Water Resources
Eastern District Office

Idaho Dept. Water Resources
150 Shoup Avenue
Idaho Falls,Id. 83401

To whom it may concern:

We wish to protest #-34-7080A/34-7136/34-7169 M. Todd Perkes, Juel and Michael Aikele application for a change of a water right.

The stated reasons are as follows: Idaho Code Section 42-222- not in the public interest-the well it is being transferred to is under a cease and desist order.

We also wish to protest #-34-00170/34-00556 Hillcreek Properties.

Stated reasons: Idaho Code 42-222 not in the public interest-

Yours truly

Rita M. Lundy
Assistant Secretary-treasurer
Minutes of 4/25/1990

CC: Lewis Rothwell
Chairman of the Board

MICROFILMED
NOV

19-Apr-1990

Douglas Rosenkrance
Water Master #34
P.O. Box 24
Mackay, ID 83251

RE: Application for Transfer No. 34-7080A/34-7136/34-7169, & 34-00170/34-00556,

Dear Watermaster:

Please find enclosed a copy of the above referenced application. Please review the application and complete the form, returning them to this office as soon as possible.

Thank you for your cooperation in this matter.

Respectfully submitted,

Harold Jones
Water Rights Supervisor

HJ/rb
Enclosure

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

Notice is hereby given that M. TODD PERKES, JUEL & MICHAEL AIKELE have applied to the Department of Water Resources to CHANGE A POINT OF DIVERSION & PLACE OF USE of the waters of a GROUNDWATER source. The right sought to be changed is evidenced by LICENSE NO.'S 34-7080A, 34-7136, & 34-7169 and recorded as follows:

POINT OF DIVERSION: SWNW SENW S 5 T 3N R 25E, BUTTE COUNTY

NO. 34-7080A AMOUNT: 2.67 CFS PRIORITY: SEPT. 23, 1974
The water is used to irrigate 160 acres from April 1 to November 1 within the NE1/4 S 11 T 3N R 25E, B.M.

NO. 34-7136 AMOUNT: 5.5 CFS PRIORITY: MARCH 26, 1976
The water is used to irrigate 160 acres from April 1 to November 1 within the NW1/4 S 11 T 3N R 25E, B.M.

NO. 34-7169 AMOUNT: 4.48 CFS PRIORITY: JAN. 6, 1977
The water is used to irrigate 160 acres from April 1 to November 1 within the SE1/4 S 11 T 3N R 25E, B.M.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the SWSW S 21 T 4N R 26E and used to irrigate 480 acres within the S1/2N1/2 S1/2

S 6 T 3N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before MAY 7, 1990.

R. Keith Higginson
Director

Published in the ARCO ADVERTISER on APRIL 19 & 26, 1990.

NOTICE OF PROPOSED CHANGE OF A WATER RIGHT

NO. 34-7080A/34-7136/34-7169

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S 6 T 3N R 26E, B.M.

Any protests against the proposed change must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, ID, 83401, on or before MAY 7, 1990.

R. Keith Higginson
Director

Published in the Custer Publishing Co. on APRIL 19 & 26, 1990.

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J HAHN
KENT W FOSTER
ROBERT E FARNAM
WILLIAM D FALER
STEPHEN E MARTIN
CHARLES A HOMER
GARY L MEIKLE
MICHAEL D CRAPO
GAYLE A SORENSON
DONALD L HARRIS
GREGOR S CHVISUK
RANDALL B REED
MARIE T FEELEY
ROBERT M FOLLETT

WEST ONE BANK BUILDING
P O BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

ARTHUR W HOLDEN (1877-1967)
ROBERT B HOLDEN (1911-1971)
TERRY L CRAPO (1939-1982)
WILLIAM S HOLDEN (1907-1988)

R VERN KIDWELL OF COUNSEL

April 2, 1990

APR - 2 1990

Department of Water Resources
Eastern District Office

Keith C. Wilson, Senior Resource Agent
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Dear Mr. Wilson:

We are again returning the Perkes--Aikele Application for Transfer. We have also prepared a new map which we think has been properly colored this time to reflect only the 480 acres shown on page 1. Apparently the coloring of the extra 40 acres was our mistake and we apologize for it. We have also enclosed a new page 1 prepared exactly as the one we sent to Harold Jones on February 16th, just in case you need a clean page.

We have requested from Todd Perkes copies of his tax notices which we will forward to you as soon as we receive them. We have been unable to reach him by telephone, but will continue to try in order to get them to you as soon as possible. This matter was a dire emergency when it was submitted in mid-February. If there is anything that can be done while you are waiting for the tax notices to come from Todd Perkes, we would very much appreciate it if you would do that.

Yours very truly,

Kent

Kent W. Foster

#3840.00/srr

Enclosure

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

FRED J HAHN
KENT W FOSTER
ROBERT E FARNAM
WILLIAM D FALER
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TERRY L CRAPO (1939 1982)
WILLIAM S HOLDEN (1907 1988)

R VERN KIDWELL OF COUNSEL

February 16, 1990

RECEIVED
FEB 16 1990
Department of Water Resources
Eastern District Office

Harold W. Jones, Water Resource Supervisor
IDAHO DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

RE: Perkes--Aikele Application for Transfer

Dear Harold:

We are returning the Perkes--Aikele Application for Transfer and the $50.00 filing fee, together with a new page 1 showing a specific 480 acres which you may use in place of the original first page if you prefer. We have also enclosed a new map and Attachment "A".

Although we assumed that it would be possible to place a condition on the transfer which could mathematically avoid the theoretical expansion issue, we will try to comply with your thoughts.

However, we do not wish to try deceive anyone about the actual facts, which are that the water from this well is placed into a ditch system with the water from all other sources and it is impossible to tell where, within the entire 1730 acres that the ditch system serves, this specific water may end up or exactly how much of the water diverted from this particular well may be evapotranspirated by the plants that end up using it.

If anything else needs to be revised, please let us know as soon as possible since we are anxious to expedite this matter in every way possible.

Yours very truly,

Kent

Kent W. Foster

#3840.00/srr

Enclosure

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

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WILLIAM S HOLDEN (1907-1988)

R VERN KIDWELL OF COUNSEL

February 14, 1990

Idaho Department of Water Resources
150 Shoup Avenue, #15
Idaho Falls, Idaho 83402

Gentlemen:

We are enclosing with this letter an Application for Transfer together with our client's check in the amount of $50.00 for the filing fee.

Our clients are most anxious to have this transfer processed as rapidly as possible and anything that can be done to expedite this matter would be greatly appreciated. If there are questions or problems, we would appreciate it if you would call us as soon as possible so that we can assist in every way appropriate to have this application processed promptly.

Thank you for your kind attention to this matter.

Yours very truly,

Kent W. Foster

Kent W. Foster

#3840.00/srr

Enclosure

RECEIVED
FEB 16 1990
Department of Water Resources
Eastern District Office

RECEIVED
FEB 14 1990
Department of Water Resources
Eastern District Office

27 March 1990

Kent Foster
C/O Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, Idaho 83405

RE: Application for permit for Idaho Gold Corporation
Transfer for Todd Perkes, Juel & Michael Aikele

Dear Mr. Foster:

Enclosed are copies of the application for permit and application for transfer that you submitted to this office. To facilitate making any corrections I have indicated those items that need to be changed. After reviewing these copies please contact me as some of the changes and additions can be made over the phone.

Your prompt response will be appreciated.

Sincerely,

Keith C. Wilson
Senior Resource Agent

[redacted]ICE PARTIAL ASSIGNMENT [redacted] PERMIT NO. 34-7080

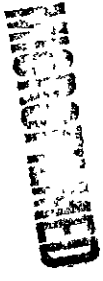
TO: JOHN E. McAFFEE
DARLINGTON, ID 83231

2/3 or 5.33 c.f.s. and the N½, Sec. 12, T. 3N, R. 25E, B.M.

Butte County; consisting of 320 acres.

FILE ALL CORRESPONDENCE PERTAINING TO THIS PART OF THE PERMIT

SEPERATELY!



April 19, 1983

RE: Permit No. 34-7080 B

John E. McAffee
Route #1, Box 26
Arco, ID 83213

Dear Mr. McAffee:

Enclosed herewith is a copy of your Water Right License issued on the above referenced permit along with a copy of your approved application for amendment.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:kw
Enclosures

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

December 17, 1982

RE: Permit No. 34-7080 B

John E. McAffee
Darlington, ID 83231

Dear Mr. McAffee:

A representative of this Department made an examination of the works covered by your Permit No. 34-7080 B and has found the following:

Amount of water that can be recognized as beneficially used under Idaho law: 5.33 cfs Source: groundwater

The maximum quantity diverted shall not exceed 858.0 acre feet per year.

Point of diversion: SW¼NE¼, Sec. 332, Twp. 5N, Rge. 26E, Butte County½

Beneficial use: Irrigation of 286 acres within the W½, Sec. 12, Twp. 3N, Rge. 25E

Priority date established: September 23, 1974

In order for the Department to issue the above license, it will be necessary for you to amend the permit to correspond with the findings of the field examiner. We are enclosing a partially completed amendment form for your use in this matter.

Please sign the amendment application and return it to this office along with a $20.00 filing fee within 30 days in order that we might issue your license as set forth above. If you do not concur with these findings or have any questions, please contact us within the 30-day period.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:kw
Enclosure

1/25/83 Skip called & licensing amendment is in action

MICROFILMED

DEPARTMENT OF WATER RESOURCES
FIELD REPORT

1. Name of permit holder [redacted]

Post office address [redacted] Phone [redacted]

Person to contact [redacted] Phone [redacted]

2. Source of water supply Groundwater [X] Surface water [ ] [redacted]
(name spring, stream, etc.)

Tributary to [redacted]

3 Water will be used for the following purposes

Amount 5.33 c.f.s for irrigation
[redacted] AF/Annum (nature of use)

Period of Use. from 4-1 to 9-1
(mo.-day) inclusive (mo.-day)

Amount [redacted] c.f.s for [redacted]
[redacted] AF/Annum (nature of use)

Period of Use from [redacted] to [redacted]
(mo.-day) inclusive (mo.-day)

Amount [redacted] c.f.s. for [redacted]
[redacted] AF/Annum (nature of use)

Period of Use: from [redacted] to [redacted]
(mo.-day) inclusive (mo.-day)

Other uses. [redacted]

Examination for [redacted]

Permit No [redacted]

[redacted] JUL 10 1919 [redacted] Eastern District

4. Total amount to be appropriated.

Max Rate of Diversion 5.33 cubic feet per second and annual volume [redacted] AF/Annum

5 Location of Point(s) of Diversion.

Township 5N N/S, Range 2E E/W, B M, Section 32, Subdivision SE 1/4 NE 1/4 [redacted] County

Township 5N N/S, Range 2E E/W, B M., Section 32, Subdivision NW 1/4 SE 1/4 [redacted] County

Township [redacted] N/S, Range [redacted] E/W, B M, Section [redacted], Subdivision [redacted] 1/4 [redacted] 1/4, [redacted] County

Other Points of Diversions [redacted]

Description of diverting works well, 15 HP with the pump
when [illegible]

Measuring device required yes [X] no [ ]

6 Lands to be irrigated or place of use

TWP	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	2E	32	40	40	40	40	40	40	40	40									320

MICROFILMED

5.33

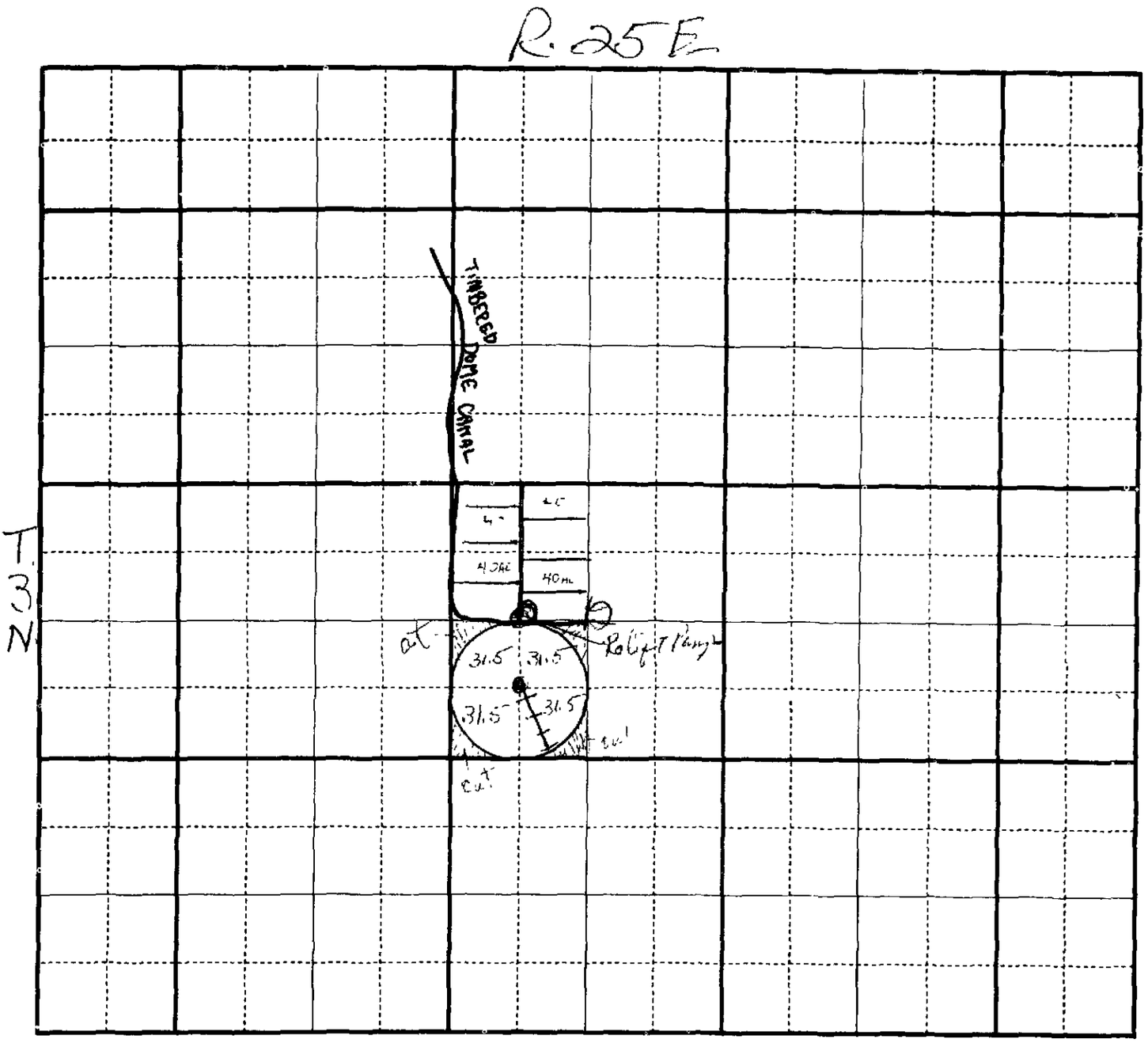
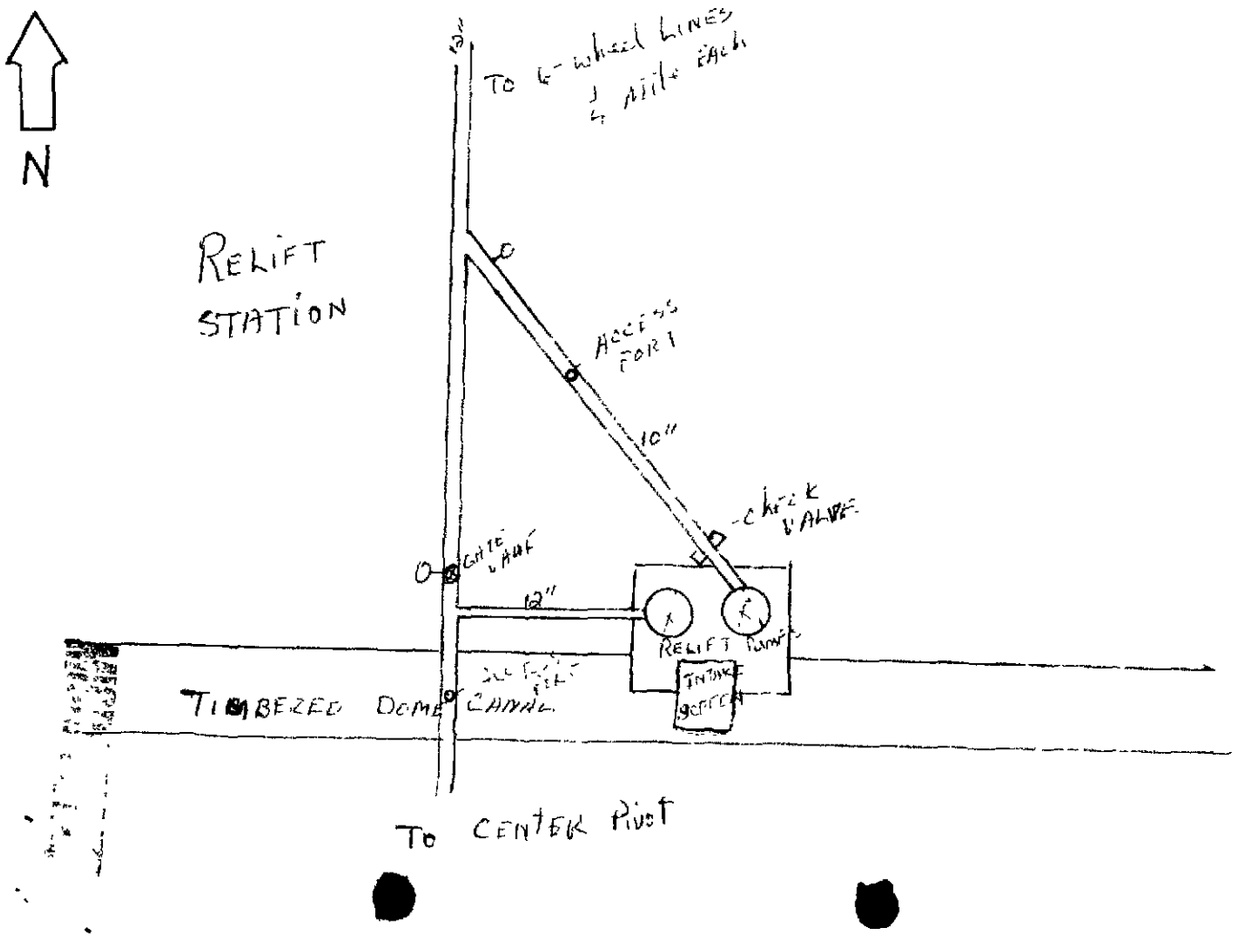


Diagram of System



DATE OF EXAM 8-7-91

ACREAGE
Found 2.16
Recommended 2.16

Irrigation Requirement 3.0 Ac Ft/Ac

USE
Irrigation Q= 5.33 ✓ c f s V= 858 AF/Ann. from April 1 to Nov 1
Domestic Q=_____ c f s V=_____ AF/Ann. from _____ to _____
Livestock Q=_____ c.f.s. V=_____ AF/Ann from _____ to _____

Is water co-mingled? yes X no_____

Name source. Timberdome Canal
twp. 5N N/S, Rge 26E E/W, B.M., Sec. 32, Sub. SE ¼ NE ¼ Butte County

Exchange? yes_____ no_____

Name source exchanged with N/A
twp._____N/S, Rge_____E/W, B.M , Sec._____, Sub _____¼_____¼_____ County

Point of injection: N/A
twp _____N/S, Rge_____E/W, B M , Sec _____, Sub._____¼_____¼_____ County

Point of exchange: N/A
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____ County

Total Q measured 5.79 cfs Method of measurement Annubar - 10.020" Kiefer, Annubar - 10.020" Kiefer,

Total Q recommended 5.33 cfs Meter No. 67-C 30" Type Parshall Condition N.E.C.

Total V recommended 858 AF/yr

Recommended Amendments:

P.D.
Place of Use See map & draft amendment
Other
None

MEASUREMENT CALCULATION. 12.000"
Q=PD — Annubar reading = 2.2" = 266 cfs. $(2.00)^2(13.033) = .2600$ cfs/in² (5.794 cfs) CAPACITY
V= 5.33 cfs 1.98 SF X 214 = 2262 ft/yr > 2.86 X 3.0 = 8.58 AF/yr
Allow 5.33 cfs and per Assignment from Pl. 47989
Q=Relift — meas 1 - $(10.02)^2(3.14)(16)$ = 1446.8 = 1464.5 — V = 1.98 X 3.0 = 5.94 AF/yr
meas 2 - $(10.02)^2(3.14)(17)$ = 1022.7 = 4.39 cfs

SYSTEM DESCRIPTION
P.D. Motor - 150hp GE (or CMD, model 5K6277XHM, SN E45023105, Pump - Schaefer I.T. 2911
13" Pipe EMPTIES into upper End of Timber Dome Canal.

Relift - Motors - U.S. Hello 1HP 5Hp Type UOC SN 1257354 - Pump Worthington 11006 ... 47989
G.E. TEFC CMD 5Hp Model D16G6U Type K SN RS 6140340 - 12Pump Johnston V.T.
Pivot - TRUMAC - 8Sec with 50' End Gun = 1.32 cfs radius

REMARKS: System Shown & explained to the Irrigator
Permit - 34-1124 overlaps Pivot filing in the W½ of Sec 12
(part

Examiner's Signature [signature] Date 1-31-92

Checked by Anthony R. Keglovich Date 4-16-92

Approved by [signature] Date 11-16-92

MICROFILMED

Note: Groundwater is discharged into the Timberdome Canal in the SWNE Sec 32 T 5N Rge 26E and is conveyed by the canal to a relift pump located in SENW of 12 T 5N R 25E.

Overlap Permit for 34-7081B

Permit 34-7121A Overlaps P/D & P/U - No Overlaps recognized as still in Permit Stage & Field exam has not been completed OK
jmi
12-19-82

RC 11/16/82

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address.
Statehouse
Boise, Idaho 83720
(208) 384-2215

July 5, 1979

John E. McAffee
Darlington,
Idaho 83231

Dear Mr. McAffee: Re: Permit No. 34-7080 (partial)

Enclosed is a copy of the order changing the measuring device requirement on your permit and also a copy of the specifications for the installation of the access port.

We acknowledge receipt of the affidavit submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this Department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

If you have any questions regarding the field examination, please contact our regional office in Idaho Falls.

Sincerely,

RITA FLECK
Water Rights

Form 47-7
8/78

RECEIVED
APR 27 1979
Department of Water Resources
Eastern District Office

Identification No. 34-7080

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of permit holder John E. McAffee

   b) Post office address Darlington, Idaho83231

2. Permit number 34-7080

3. Date of priority that you are prepared to establish 9-23-1974

4. a) Source from which water was appropriated groundwater

   b) Location of the point of diversion: SW ¼ NE ¼, Section 32

   Township 5N, Range 26E Boise Meridian. Other points of diversion:

   NW¼SE¼, Sec. 32, T. 5N, R. 26E, B.M.

5. a) The amount of water and use to which the water has been applied:

   Amount 5.33 (cfs &/or acre-feet per annum) for Irrigation purposes from 4/1 (month-day) to 11/1 (month-day) incl.

   Amount _____ (cfs &/or acre-feet per annum) for _____ purposes from _____ (month-day) to _____ (month-day) incl.

   Amount _____ (cfs &/or acre-feet per annum) for _____ purposes from _____ (month-day) to _____ (month-day) incl.

   b) Total amount appropriated 5.33 cfs cfs and/or acre-feet per annum.

   c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement:

6. If the means of diversion and conveyance are owned by someone other than the permit holder:
   a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use:

   b) Describe the agreement of understanding by which you take water from the works:

7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch):

   Well, 150 Hp. motor with one pump, wheel lines

   b) Describe the provision for making a measurement which you have at your point of diversion: (i.e., installed measuring device, access port, other)

   Applicant will provide access port, as per the Department's specifications.

c) Give well driller's name and address and the date the well was completed: Boyd Lambert of Mackay, Idaho

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use:

9. Irrigation uses: describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision:

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	25E	12	40	40	40	40	40	40	40	40									320

Total number of acres irrigated 320

10. Remarks:

The above information is a true statement of the extent to which the above numbered permit has been developed.

4-26-79
(Date)

John Mahoffa
(Signature)

State of)
) ss.
County of Butte)

On this 26 day of April, 19 79, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Audrey R Bailey
Notary Public
Residing at Arco Idaho

My commission expires Lifetime

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF CHANGING THE MEASURING DEVICE REQUIREMENT FOR PERMIT NO. 34-7080

ORDER

WHEREAS, the above numbered permit was approved with the condition that a measuring device of a type approved by the Department be permanently installed and maintained as part of the diverting works; and,

WHEREAS, on July 1, 1978, the Department adopted a new water measurement condition which states: "An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department"; and,

WHEREAS, the former condition required the permit holder to purchase and install a measuring device or hire a professional engineer to certify the rate of diversion; and,

WHEREAS, the measuring device condition effective July 1, 1978, requires less capital expenditure by the permit holder; and,

WHEREAS, to be equitable to holders of permits issued prior to July 1, 1978, the new condition should be retroactive;

NOW THEREFORE, it is hereby ordered that the condition of approval of this permit related to water measurement is hereby changed as follows: "The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access port or other device as specified by the Department".

Dated this 18th day of August, 1978.

C. STEPHEN ALLRED
Director

December 10, 1976

Re: Permit No. 34-7080 (Part)

John E. McAffee
Darlington,
Idaho 83231

Dear Mr. McAffee:

Enclosed is a copy of the approved application for amendment issued on the above referenced permit.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:JFR

Encl: amendment

January 21, 1976

Re: Permit No. 34-7080 (Part)

John E. McAffee
Darlington, ID
83231

Dear Mr. McAffee:

We acknowledge receipt of the assignment conveying the above referenced permit to you. The assignment has been recorded and the Department's records have been changed.

Sincerely,

D. DARLENE REICH
Water Rights Supervisor

DDR:JFR

January 23, 1976

RE: Application for Amendment No. 34-7080 (Part)

The Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted _____ by _____

RDC:ME

Legal Notice (1)

PUBLIC NOTICE

NOTICE OF PROPOSED AMENDING OF WATER RIGHT

Notice is hereby given that Permit No. 34-7080 (Part) was assigned to John E. McAffee, issuing the diversion of 5.33 c f.s. of water from a ground-water source with the point of diversion in the NW¼NE¼, Sec 5, T. 4N, R. 26E, B M., Butte County, to be used from Apr. 1 to Nov 1 for the irrigation of 320 acres within the N½, Sec 12, T 3N, R. 25E, B M.

The permit holder now proposes to amend Permit No. 34-7080 (Part), changing the points of diversion to the SE¼SW¼, SW¼NE¼, Sec. 32, T 5N, R. 26E, B.M

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before February 16, 1976

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho, on January 29 and February 5, 1976.

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No. 34-7080 (Part) was assigned to John E. McAffee, issuing the diversion of 5.33 c.f.s. of water from a ground-water source with the point of diversion in the NW¼NE¼, Sec. 5, T. 4N, R. 26E, B.M., Butte County; to be used from Apr. 1 to Nov. 1 for the irrigation of 320 acres within the N½, Sec. 12, T. 3N, R. 25E, B.M.

The permit holder now proposes to amend Permit No. 34-7080(Part), changing the points of diversion to the SE¼SW¼, SW¼NE¼, Sec. 32, T. 5N, R. 26E, B.M.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resoruces, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before February 16, 1976.

R. KEITH HIGGINSON

Director

Published in the Arco Advertiser, Arco, Idaho, on January 29 and February 5, 1976.

January 16, 1976

RE: Application for Amendment No. 34-7080 (Part)

Mr. John McAffee
Darlington
Idaho 83231

Dear Mr. McAffee:

Attached herewith is Departmental receipt No. 15563 in the amount of $10.00 for the above referenced amendment.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:ME

Attachment

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

May 11, 1976

RE: Application for Amendment No. 34-7080 (Part) JOHN E. McAFFEE

Mr. Clyde C. Hymas
Rt. #1, Box 4
Moore, Idaho 83255

Dear Mr. Hymas:

There are four items the Department can consider at any water right conference and/or hearing. These four things are:

(1) Will the proposed use reduce the quantity of water under existing water rights?

(2) Is the proposed water supply insufficient for the purposes intended?

(3) Is the application made in good faith or for delay or speculative purposes?

(4) Has the applicant sufficient financial resources with which to complete the project?

Since a permit from the Department in no way grants access or easements to cross or enter the lands of another person, easements are not sufficient grounds for protest. If you have evidence that this well will, in fact, interfer with prior existing rights, then the Department will accept your protest and schedule a hearing to hear such evidence.

Because the Department recently held a conference to hear protest against the granting of permits to drill wells in the same general area, and at the conference all of the protests were withdrawn, we would like to know what additional information you now have that was not available at the previous conference.

We have accepted your letter as an intent to protest and will take no action for an additional ten (10) days to allow the opportunity to clarify the issues involved. If you wish to continue with this protest and have a hearing in the matter, please submit a protest clarifying your objections within the next ten (10) days.

If you have any questions, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

May 11, 1976

RE: Application for Amendment No. 34-7080 (Part) JOHN E. McAFFEE

Mr. Cleve D. Hymas
Box 615
Moore, Idaho 83255

Dear Mr. Hymas:

There are four items the Department can consider at any water right conference and/or hearing. These four things are:

(1) Will the proposed use reduce the quantity of water under existing water rights?

(2) Is the proposed water supply insufficient for the purposes intended?

(3) Is the application made in good faith or for delay or speculative purposes?

(4) Has the applicant sufficient financial resources with which to complete the project?

Since a permit from the Department in no way grants access or easements to cross or enter the lands of another person, easements are not sufficient grounds for protest. If you have evidence that this well will, in fact, interfer with prior existing rights, then the Department will accept your protest and schedule a hearing to hear such evidence.

Because the Department recently held a conference to hear protest against the granting of permits to drill wells in the same general area, and at the conference all of the protests were withdrawn, we would like to know what additional information you now have that was not available at the previous conference.

We have accepted your letter as an intent to protest and will take no action for an additional ten (10) days to allow the opportunity to clarify the issues involved. If you wish to continue with this protest and have a hearing in the matter, please submit a protest clarifying your objections within the next ten (10) days.

If you have any questions, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

May 10, 1976

RE: Application for Permit No. 32 7014 STUCKI
" " " No. 34-7111 [illegible]E
" " " No. 34 7115 [illegible]SON
Application for [illegible]t No. 34-7130 [illegible]E
Claim to a Water Right No. 34-[illegible] CITY OF [illegible] CITY
" " " NO. 34-4027 CITY OF [illegible] CITY

Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced applications. The legal notice was to have been published in your paper on April 22 and April 29, 1976.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

cc: IDWR - State Office

April 16, 1976

RE: Application for Amendment No. 34-7080 McAFFEE

Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted____ _ _____by___ _____

RDC:CW

Enc: Legal Notice (1)

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No 34-7080 (Part), in the name of John McAffee was amended January 16, 1976 by changing the points of diversion to the SE¼SW¼, SW¼NE¼, Sec 32, T. 5N, R 26E, B M , Butte County

The permit holder is now amending the amended Permit No 34-7080 changing the points of diversion to the SW¼NE¼, NW¼SE¼, Sec 32, T. 5N, R 26E, B.M.

Any protest to the proposed amending of the amended permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho. 83401, on or before May 10, 1976

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho, on April 22 and April 29, 1976

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No. 34-7080 (Part), in the name of John McAffee was amended January 16, 1976 by changing the points of diversion to the SE¼SW¼, SW¼NE¼, Sec. 32, T. 5N, R. 26E, B.M., Butte County.

The permit holder is now amending the amended Permit No. 34-7080 changing the points of diversion to the SW¼NE¼, NW¼SE¼, Sec. 32, T. 5N, R. 26E, B.M.

Any protest to the proposed amending of the amended permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before May 10, 1976.

R. KEITH HIGGINSON

Director

Published in the Arco Advertiser, Arco, Idaho, on April 22 and April 29, 1976.

April 26, 1976

RE: Application for Amendment No. 34-7080 Part

Mr. John E. McAffee
Darlington,
Idaho 83231

Dear Mr. McAffee:

As you recall, on January 9, 1976, you originally applied to the Department to amend the point of diversion under your part of permit No. 34-7080. Your application for amendment was protested and at the conference the protest was withdrawn, but it was determined that the well locations were incorrect and you subsequently made application for a new amendment. Since this additional amendment has been filed your original application for amendment has no purpose. I recommend that you write to the Department and withdraw your original application for amendment. Your doing this would help keep the Department's records in this matter clear.

If you have any questions, please feel free to contact me.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

INTER-DEPARTMENT MEMO — 1

FROM Dave Tuthill

DATE 4-23-76

TO Ron Carlson

SUBJECT 34-708(1) Amendment

Here it is!

APR 26 1976

Department of Water Resources
Eastern District Office

Dave

SIGNATURE

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7166

April 14, 1976

RE: Application for Amendment No. 34-7080 McAFFEE
Application for Permit No. 34-7118 R. BRUCE SOELBERG
" " " No. 34-7119 COBURN RANCH
" " " No. 34-7121 McAFFEE

Mr. Grant Daniels
Darlington, Idaho 83231

Dear Mr. Daniels:

Pursuant to the information presented at the conference held in Arco, Idaho, April 8, 1976, and in view of the fact that the only protest against the granting of these permits was withdrawn, the Department has now resumed the processing of these applications for permit.

If you need further information or have additional questions, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

April 14, 1976

RE: Application for Amendment No. 34-7080 McAFFEE
Application for Permit No. 34-7118 R. BRUCE SOELBERG
" " " No. 34-7119 COBURN RANCH
" " " No. 34-7121 McAFFEE

Mr. John E. McAffee
Darlington, Idaho 83231

Dear Mr. McAffee:

Pursuant to the information presented at the conference held in Arco, Idaho, April 8, 1976, and in view of the fact that the only protest against the granting of these permits was withdrawn, the Department has now resumed the processing of these applications for permit.

If you need further information or have additional questions, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
1515 Lincoln Road • Idaho Falls, Idaho
83401

FILED

Returned Receipts

34-7080 - John E. McAffee

Courtroom, Memorial Building, Arco, Idaho

April 8, 1976 - 9:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing

March 30, 1976

Mr. William G. Carlson
Memorial Building
Drawer 804
Arco, Idaho 83213

Dear Mr. Carlson:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on April 7, 1976 at 3:00 p.m., and April 8, 1976 at 9:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

Name and Address of Sender

Indicate type of mail:
☐ REGISTERED ☐ REGISTERED C.O.D.
☐ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	RESTRICTED DELIVERY FEE	ACTUAL VALUE	HANDLING CHARGE	REMARKS*
1	17	Gordon Fulton Pingley Idaho	13	30	15				34-7124
2	18	Harry Tenbergen Sellmin Idaho	13	30	15				"
3	19	Judy Lutke Mackay	13	30	15				"
4	20	Richard Howard Challis Idaho	13	30	15				"
5	21	Francis Smith, Twin Falls Idaho	13	30	15				"
6	22	Wilbur J. Smyth, Twin Falls Idaho	13	30	15				"
7	23	(illegible) Coburn, Paris, Texas	13	30	15				34-7119
8	24	Thos Rinaldi, Burlington, Iowa	13	30	15				34-7120 34-7121
9	25	L Bruce Sanders 3rd 14th Ave	13	30	15				34-7118
10	26	Fred L McCaskill Huntington, Texas	13	30	15				34-7122
11		"							34-7123
12					15				
13									
14									
15									
16		Sent by Certified Mail							
17		34-7124							
18									
19									
20									

TOTAL NO. OF PIECES LISTED BY SENDER

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POSTMASTER, PER (Name of receiving employee)

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PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

(Declaration of value is required on international registered mail)

★ U.S. GOVERNMENT PRINTING OFFICE: 1974 O 529-745

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protests Against Approval of Application for Permit No. 34-7121 in the name of JOHN E. McAFFEE and Protest Against Approval of Amendment No. 34-7080 in the name of JOHN E. McAFFEE	NOTICE OF CONFERENCE AND/OR HEARING

On January 9, 1976, John E. McAffee filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On January 16, 1976, John E. McAffee filed application for amendment to change the point of diversion under Permit No. 34-7080. On January 26, 1976, the Department received a protest against approval of said applications from Grant Daniels.

The Department has set the matter of protests for conference and/or hearing for Thursday, April 8, 1976, at 9:00 a.m., in the Courtroom of the Memorial Building, Arco, Idaho. Because of the similarity of the issues involved this hearing has been combined with Application for Permit No. 34-7118, R. Bruce Soelberg; and No. 34-7119, Coburn Ranch. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all partie to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicant or protestant may allow the Department without prejudice to dismiss the protests or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 29th day of March, 1976.

Ronald D. Carlson

RONALD D. CARLSON

Supervisor, Eastern Region

February 17, 1976

RE: Application for Amendment No. 34-7080 (Part) McAffee
Application for Permit No. 33-7041 HALL
" " " No. 34-7122 TIMBERLINE BEET INC.
" " " No. 34-7123 BURNS

The Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Would you please sumit an affidavit of publication and certified bill in connection with the above referenced applications. The legal notices were to be published in your paper on January 29 and February 5, 1976.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

bc: Darlene

called 2-23-76 cw

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

January 27, 1976

RE: Applications for Permit Nos. 34-7118, 34-7119, 34-7121
Application for Amendment No. 34-7080

Mr. Grant Daniels
Box 114
Darlington, Idaho 83213

Dear Mr. Daniels:

Yesterday while you were in this office I neglected to get a letter for the file clarifying your protest against granting permit no. 34-7118, in the name of R. Bruce Soelberg. I have prepared a letter based on the information you presented to me, and if it correctly expresses your objection, please sign it and return it to this office as a record for the file. Feel free to make any corrections, or discard the letter completely if it is not adequate.

We have receipted the other protests you submitted against the above referenced applications. As I indicated to you before, the following are the principle items that we can consider at a conference and/or hearing in either approving or denying an application for permit (Section 42-203, Idaho Code):

(1) Will the proposed use reduce the quantity of water under existing water rights?

(2) Is the proposed water supply insufficient for the purposes intended?

(3) Is the application made in good faith or for delay or speculative purposes?

(4) Has the applicant sufficient financial resources with which to complete the project?

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the individuals concerned through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:me

cc: IDWR - State Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT

Cecil D. Andrus
Governor

R. Keith Higginson
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

January 28, 1976

Mr. John E. McAffee
Darlington
Idaho 83231

Dear Mr. McAffee:

We have enclosed a copy of the protest filed against the issuance of a permit pusuant to your Application No. 34-7121, and your Application for Amendment No. 34-7080. You should be aware that the following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for permit (Section 42-203, Idaho Code):

(1) Will the proposed use reduce the quantity of water under existing water rights?

(2) Is the proposed water supply insufficient for the purposes intended?

(3) Is the application made in good faith or for delay or speculative purposes?

(4) Has the applicant sufficient financial resources with which to complete the project?

The Department cannot allow a permit for irrigation purposes which would entail the use of more than a continuous flow of 0.02 cubic feet per second of water for each acre of land, or an annual amount of 5 acre feet for each acre of land, unless the applicant can show that more is required (Section 41-202, Idaho Code).

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the applicant through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for a conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of any assistance, please contact us.

Very truly yours,

Ronald D. Carlson

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:ME

cc: IDWR - State Office

JAN 29 1976
Department of Water Resources

January 26, 1976

Department of Water Resources
1515 Lincoln Road
Idaho FAlls, Idaho 83401

Dear Mr. Carlson:

I have a permit (No. 34-7092) for 12.0 c.f.s. The system is in and we pumped 5,000 GPM last irrigation season. Jewell and Herman Aikele have a well within 700 feet of our well and are pumping 5,000 GPM. Rodney Pearson has a well that has just been drilled within 300 feet of our well. This well has not yet been pumped. We object to John McAffee drilling a well within the SE¼SW¼, Sec. 32, T. 5N, R. 26E, B.M.

It is not reasonable to expect the ground-water system to supply adequate water for this many big wells located that close together.

Very truly yours,

GRANT DANIELS
Darlington, Idaho

3/79

IDENT. NO. 34-7080A

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT DATA ENTRY LOG

Initials	Date	Item
		Original form entered
		Edit Report Correct
		Date Protested
		Date of Hearing
		Date Approved/Denied (Proof due date, stage and/or status, conditions of approval, water district)
		Record Verified
		Amendment Approved
		Extension Approved
		Partial Proof
		Proof Complete
		Field Exam Received
		Field Exam Accepted and changes entered
		License Signed
		Transfer Approved
		Keypunched by State Office
D.W.	11/1/82	License update (PART A)
D.W.	4/27/83	" " (PART B)

October 4, 1982

RE: Permit Nos. 34-7080A, 34-7130 and 34-7102

Marshal Todd Perkes
Route #1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

Enclosed herewith are copies of your water right licenses issued on the above-referenced permits along with copies of your approved applications for amendment. Also enclosed is Departmental Receipt No. 34220 in the amount of $60.00.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ/kw
Enclosures

August 20, 1982

RE: Permit Nos. 34-7060 A, 34-7106 and 34-7169

Marshal Todd Perkes
Route #1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

On July 9, 1982, we forwarded amendments to you to be completed to amend these permits to correspond with the findings of the field examiner so that we could issue these licenses.

As of this date, we have not received these amendments. If we do not receive them within fifteen (15) days, we will assume you no longer have any interest in these permits and cancellation proceedings will begin.

If you have any questions, please contact us.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:kw

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

July 9, 1982

RE: Permit No. 34-7080A

Marshal Todd Perkes
Route #1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

A representative of this Department made an examination of the works covered by your Permit No. 34-7080A and has found the following:

Amount of water that can be recognized as beneficially used under Idaho law: 2.67 cfs Source: groundwater

The maximum quantity diverted shall not exceed 480.0 acre feet per year.

Point of diversion: SW¼NW¼, SE¼NW¼, Sec. 5, Twp. 3N, Rge. 25E, Butte County

Beneficial use: Irrigation of 160 acres within the NE¼, Sec. 11, Twp. 3N, Rge. 25E

Priority date established: September 23, 1974

In order for the Department to issue the above license, it will be necessary for you to amend the permit to correspond with the findings of the field examiner. We are enclosing a partially completed amendment form for your use in this matter.

Please sign the amendment application and return it to this office along with a $20.00 filing fee within 30 days in order that we might issue your license as set forth above. If you do not concur with these findings or have any questions, please contact us within the 30-day period.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:kw
Enclosure

Jim 6-8-82

LICENSEING REVIEW: 34-7136, 34-7080A
34-7169

Pt of diversion:

200 HP - ANNUBAR MEASUREMENT
5.17 cfs - 34-7136, 34-7080A
7.26 cfs - 34-7169 TOTAL = 12.43 cfs

Pt of rediversion:

Two pumps; 100 HP & 200 HP - McCROMETER MEASUREMENT
5.8 cfs

OVERLAP REVIEW:

Permit 34-7136 & 34-7080 both have NE^4 OF SEC. 11 - FIELD EXAMINER RECOMMENDED NE^4 SEC. 11 TO BE LICENSED UNDER 34-7...

The rediversion station also supplies water to land under 34-7169 (SE^4 sec 11)

The rediversion station has an in line meter for water diverted to the N^2 sec. 11 and covered under permits 34-7136 (NW^4 sec 11) and 34-7080 (NE^4 sec 11). Water diverted to SE^4 sec 11 was measured by ANNUBAR at time of EXAM.

Total diversion of the station as measured is:
5.81 cfs micrometer - 34-7136, 34-7080
2.68 cfs ANNUBAR - 34-7169
8.49 cfs

ACRES IRRIGATED:

Permit	34-7080 A	160	34-7080 B 286
	34-7136	160	
	34-7169	160	
		480 AC	

AMOUNT OF WATER SUPPLIED BY REDIVERSION STATION TO ABOVE LANDS:

34-7169 - 2.68 cfs for 160 ACRES

34-7136 & 34-7080A 5.81 cfs for 320 ACRES

Since the rediversion system is constructed such that the 5.81 cfs can be available to supply .02 cfs/ac for each 160 AC PARCEL the license should allow 3.2 cfs for each right with a limit of 5.81 cfs when combined.

The quantity for 34-7169 should be limited to 2.68 cfs for the 160 acre since that is the amount measured. A condition is required which limits the total rate of diversion to 8.49 cfs when all rights are combined.

AMOUNT REQUIRED AT POINT OF DIVERSION TO ALLOW FOR CHANNEL LOSS.

3-7136 - 30%
3-7169 - 40%
3-7080A - 0%
} ALLOWED ON PERMIT

Permit quantities:

3.-7136	5.50	5.17 Licensed
3.-7080 A	2.67	2.67 Licensed
3.-7169	5.32	4.48 Licensed
	13.49 cfs	12.32

3.-7136 & 3-7080 A have same P/D with rate of diversion of 5.17 cfs There fore 3-7136 cannot be licensed for more than 5.17 cfs unless permit is amended to include the P/D under 3"-7169

3.-7080 A can be licensed for 2.67 cfs but will require a condition which limits rate of diversion to 5.17 cfs when combined with 3.-7136 unless Amended to add P/D under 3'-7169.

3.-7169 can be licensed for 4.48 cfs but limited to 2.68 cfs at the point of rediversion. The 4.48 cfs is 2.68 cfs plus 40% channel loss.

Jim

6-10-82

CONDITIONS OF APPROVAL

Assumes P/D addition

31-7136

This right when combined with 31-7169 & 31-7080A shall not exceed 12.43 cfs at the points of diversion. and shall not exceed 8.49 cfs at the point of rediversion located within SE¼NW¼ SEC 11 T3N R2SE.

This right IN NO way grants right of way or easement across land of another

This right shall not provide more than 0.02 cfs/acre for the lands identified above.

31-7169

This right when combined with 31-7136 & 31-7080A shall not exceed 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of rediversion located within SE¼NW¼ SEC. 11 T3N R2SE.

This right IN NO way grants right of way or easement across land of another

This right shall not provide more than 2.68 cfs or 0.017 cfs/acre for the lands ~~above~~. identified above.

3 - 7080 A

This right when combined with 3 - 7136 & 3 - 7169 shall not provide more than 12.43 cfs at the points of diversion and shall not exceed 8.49 cfs at the point of rediversion located within SE^4NW^4 sec 11 T3N R25E.

This right in no way grants right of way or easement across land of another

This right shall not provide more than 0.02 cfs/acre for the lands identified above.

MEMO

TO: Files 34-7169, 34-7136 and 34-7080A Date: 3/12/1982

FROM: Jim Johnson

RE: Conveyance system used to deliver water from the point of diversion to the point of rediversion.

On this day I called Rita Lundy, Secretary for the Big Lost River Irrigation District to determine the amount of water normally flowing in the Timber Dome Canal during the irrigation season so that amount of water lost between the said diversion points could be determined and reflected on the licensed water right.

She informed me that there is presently a lawsuit pending disputing ownership of the Timber Dome Canal. The Timber Dome Canal as it is called on Right 34-7169 and 34-7136 is called the Blaine Canal or U.C. Canal by the Big Lost River Irrigation District.

According to Ms. Lundy the Big Lost River Irrigation District charges an user fee to water right owners and share holders using the Irrigation District Canals.

The permit holder uses the said canal to deliver his groundwater source to the place of use. The Big Lost River Irrigation District feels that this canal belongs to them and has charged the permit holder and other users a fee for the use of the canal. In turn, several of the users have filed suit against Big Lost River Irrigation District contesting their authority over said canal.

The above information has little to do with the issuance of the water right except that Ms. Lundy has requested that instead of identifying the canal used as the Timber Dome Canal that we use the name of Blaine Canal or U.C. Canal.

In reference to capacity of the canal, it appears that its capacity is much greater than what is actually diverted into the canal because the canal is also used for flood control diversions. When first constructed it was designed to supply water for 50,000 to 100,000 acres; however, it appears that much of the land was never developed.

As to the loss to groundwater, the irrigation district will vary the amount depending on yearly climate conditions. For example, normally the district assesses a 30% loss however in 1977 the district charged 50% loss.

SUMMARY:
The capacity of the Timber Dome Canal is much larger that the amount of water being diverted into it. The capacity of the canal is not known therefore the Moritz Formula cannot be used to determine water losses.

The litigation over canal right-of-way should not impact the amount of water used under this license except that if the Big Lost River Irrigation District obtains control they will assess a 30% loss, in some years 50% loss to the permit holder.

NOTICE PARTIAL ASSIGNMENT PERMIT NO. 34-7080A

TO: MARSHAL TODD PERKES
ROUTE 1, BOX 113 - B
ARCO, ID 83213

1/3 or 2.67 c.f.s. and the NE¼, Sec. 11, T 3N, R 25E,

Butte County, consisting of 160 acres

FILE ALL CORRESPONDENCE PERTAINING TO THIS PART OF THE PERMIT BEHIND THE GREEN CARD SEPARATE FROM THE REST OF THE PERMIT.

DEPARTMENT OF WATER RESOURCES
FIELD REPORT

1. Name of permit holder Marshall Todd Pulse

Post office address Rt 1, Box 111, Chico Phone _____

Person to contact _____ Phone _____

2. Source of water supply: Groundwater ☒ Surface water ☐ _____ (name spring, stream, etc.)

Tributary to _____

3. Water will be used for the following purposes

Amount 5.5 c.f.s. for irrigation
_____ AF/Annum (nature of use)

Period of Use: from 4-1 to 11-1
(mo -day) inclusive (mo.-day)

Amount _____ c f s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo -day) inclusive (mo -day)

Amount _____ c.f s for _____
_____ AF/Annum (nature of use)

Period of Use from _____ to _____
(mo.-day) inclusive (mo.-day)

Other uses: _____

FEB 22 1979
Department of Water Resources
Eastern District Office

Permit No 32-7615 (Amended)
Examination for _____

4. Total amount to be appropriated·

Max Rate of Diversion 5.5 cubic feet per second and annual volume _____ AF/Annum

5. Location of Point(s) of Diversion·

Township 24N N/S, Range 2E E/W, B M , Section 5 , Subdivision SW ¼ NE ¼ Butte County

Township _____ N/S, Range _____ E/W, B M , Section _____ , Subdivision _____ ¼ _____ ¼, _____ County

Township _____ N/S, Range _____ E/W, B M., Section _____ , Subdivision _____ ¼ _____ ¼, _____ County

Other Points of Diversions RELIFT P.D. SENE SEC 11 T.3N. 2E

Description of diverting works 20' x 30'

Measuring device required yes ☒ no ☐

6 Lands to be irrigated or place of use

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	2E	11	40	a/c	40	40													11 a.c.

TOTAL ACREAGE 11 ac

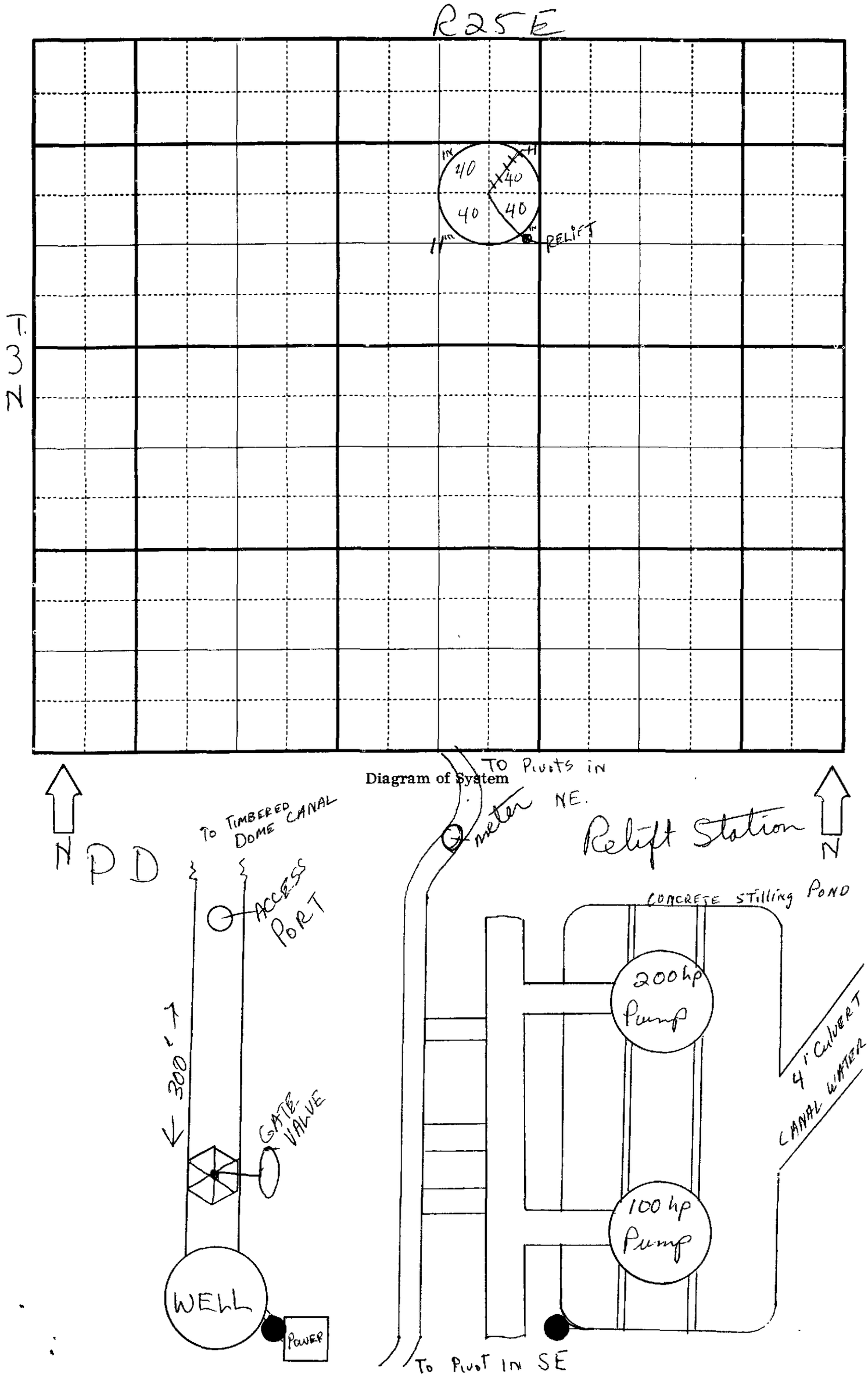


Diagram of System

DATE OF EXAM 6-26-79

ACREAGE
Found 160
Recommended 160

Irrigation Requirement 3.0 Ac Ft/Ac

USE
Irrigation Q= 3.20 c.f.s. V= 480.0 AF/Ann. from Apr. 1 to Nov. 1
Domestic Q= ____ c.f.s. V= ____ AF/Ann from ____ to ____
Livestock Q= ____ c.f.s. V= ____ AF/Ann. from ____ to ____

Is water co-mingled? yes X no ____

Name source: Timberdome Canal
twp. 4N N/S, Rge 26E E/W, B.M., Sec. 5, Sub. SW ¼ NW ¼ Butte County

Exchange? yes ____ no ____

Name source exchanged with n/a
twp. ____ N/S, Rge ____ E/W, B.M., Sec ____, Sub. ____ ¼ ____ ¼ ____ County

Point of injection: N/A
twp. ____ N/S, Rge ____ E/W, B M., Sec. ____, Sub. ____ ¼ ____ ¼ ____ County

Point of exchange: N/A
twp ____ N/S, Rge ____ E/W, B.M., Sec. ____, Sub. ____ ¼ ____ ¼ ____ County

Total Q measured 5.17 c.f.s. Method of measurement ANNUBAR AT P.D. INLINE METER AT RELIFT

Total Q recommended 3.20 c.f.s. Meter No. 78-12163 Type McCROMETER Condition GOOD ✓

Total V recommended 480 AF/yr

Recommended Amendments:

P.D. ____
Place of Use ____
Other ____
None NONE ✓

MEASUREMENT CALCULATION:
P.D. - ANNUBAR READING = 36" = 2321 = 5.17 CFS
V = 3.20 X 1.9835 X 214 = 1358.3 AF/yr > 3.0 X 160 = 480 AF/yr

SYSTEM DESCRIPTION:
P.D. < Motor - U.S. Hollowshaft 800 hp Type H.U. S.N. 1387258
Pump - Layne + Bowler Welline S.N. 45957
Relift < Motor - No.1 G.E.-Tri Clad 100 hp Model SK6257XH501A - No.2 US High Thrust 200 hp # C1516 01 588 B502930
Pump - No.1 Johnston V.T. S.N. 45948 - No 2. Aurora Vertiline No. S.N.
Pivots - Valley Corner Model 5171

REMARKS:
See Examiner's report dated 7-31-79
Note: ground water is delivered from well in NW¼ SW¼ T4N R26E and is piped diagonally into the Timberdome Canal - a 24" wide water is conveyed to P.D. in 42" dia. pipe. Canal water is lifted by a pump located in the SW¼ SW¼ Sec 5 Twp 4N R26E

Examiner's Signature Rodney A Parker Date 11-28-79

Checked by Anthony R. Dziekowski Date 3-4 80

Approved by [signature] Date 3/19/82

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address
Statehouse
Boise, Idaho 83720
(208) 384-2215

February 16, 1979

Marshal Todd Perkes
Route 1, Box 110
Arco, ID 83213

Dear Mr. Perkes:

Re: Permit Nos. 34-7060, 34-7080 (part), 34-7136 and 34-7169

We acknowledge receipt of the affidavit submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this Department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

If you have any questions regarding the field examination, please contact our regional office in Idaho Falls.

Sincerely,

RITA FLECK
Water Rights

MICROFILMED

Form 217a
8/78

Identification No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of permit holder Marshal Todd Perkes

   b) Post office address Rt #1 Box 110, ARCO Idaho 83213

2. Permit number 34-7080 partial & 34-7136

3. Date of priority that you are prepared to establish May 1976

4. a) Source from which water was appropriated ground Source.

   b) Location of the point of diversion: SW ¼ NW ¼, Section 5

   Township 4N, Range 26E Boise Meridian. Other points of diversion: _____

5. a) The amount of water and use to which the water has been applied:

   Amount 5.5 (cfs &/or acre-feet per annum) for Irrigation purposes from Apr. 1 (month-day) to Nov 1 (month-day) incl.

   Amount _____ (cfs &/or acre-feet per annum) for _____ purposes from _____ (month-day) to _____ (month-day) incl.

   Amount _____ (cfs &/or acre-feet per annum) for _____ purposes from _____ (month-day) to _____ (month-day) incl.

   b) Total amount appropriated _____ cfs and/or acre-feet per annum.

   c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement:
   Weir rectangular

6. If the means of diversion and conveyance are owned by someone other than the permit holder:
   a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use:
   Timber dome Canal Company 7 miles to place of use.

   b) Describe the agreement of understanding by which you take water from the works: Own share in Canal Company.

7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch):
   pump size 200 horse power 20" well casing, 300' feet deep.

   b) Describe the provision for making a measurement which you have at your point of diversion: (i.e., installed measuring device, access port, other)
   rectangular Weir.

Examined

c) Give well driller's name and address and the date the well was completed: Lambert Well Drilling, P.O. Box 301, Mackay Idaho 83213, 1976

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use:

9. Irrigation uses: describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision:

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	25E	11	40	40	40	40	40	40	40	40									320

Total number of acres irrigated 320

10. Remarks: There is a ditch Transportation loss involved.

The above information is a true statement of the extent to which the above numbered permit has been developed.

Feb. 12 1979
(Date)

Marshal Todd Perkins
(Signature)

State of Idaho)
) ss.
County of Butte)

On this 12th day of February, 19 79, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Notary Public
Residing at Arco, Idaho

My commission expires Life term
Bond: 11/2/79

April 2, 1976

RE: Application for Amendment No. 34-7080 PERKES

The Arco Advertiser
Box "C"
Arco, Idaho 83212

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted _____ by _____

RDC:ME

Legal Notice (1)

April 26, 1976

RE: Application for Permit No. 34-7136 PERKES
" " " No. 34-7137 BURNS
Application for Amendment No. 34-7080 PERKES

Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced applications. The legal notice was to have been published in your paper on April 8 and April 15, 1976.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:CW

PUBLIC NOTICE

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No. 34-7080 in the name of Thomas Perkes was issued for the diversion of 8.00 cfs of water from a ground-water source within the NW¼NE¼, Sec. 5, T ½N, R. 26E, B M , Butte County, to be used to irrigate 480 acres within the NE¼, Sec 11, N½, Sec 12, T 3N, R. 25E, B M

The permit holder now proposed to amend Permit No. 34-7080 changing the point of diversion to the SW¼NW¼, Sec 5, T. 4N, R 26E, B M

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 26, 1976.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho, on April 8 and April 15, 1976

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No. 34-7080 in the name of Thomas Perkes was issued for the diversion of 8.00 cfs of water from a ground-water source with the point of diversion within the NW¼NE¼, Sec. 5, T. 4N, R. 26E, B.M., Butte County; to be used to irrigate 480 acres within the NE¼, Sec. 11, N½, Sec. 12, T. 3N, R. 25E, B.M.

The permit holder now proposes to amend Permit No. 34-7080 changing the point of diversion to the SW¼NW¼, Sec. 5, T. 4N, R. 26E, B.M.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 26, 1976.

R. KEITH HIGGINSON

Director

Pubished in the Arco Advertiser, Arco, Idaho, on April 8 and April 15, 1976

Filing Fee: $10.00
Receipt # 15709

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
MAR 29 1976
Department of Water Resources
Eastern District Office

APPLICATION FOR AMENDMENT

Permit No. 34-7080

Comes now Marshal Todd Perkes of (address) Rt. #1, Box 113B, Arco, ID 83213, and represents to the Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 34-7080(Part), and requests that the permit and permit map be changed as follows:

1. Point of diversion: SW ¼ NW ¼, Sec. 5 Twp. 4N Rge. 26E, B.M., County of Butte. Other points of diversion:

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

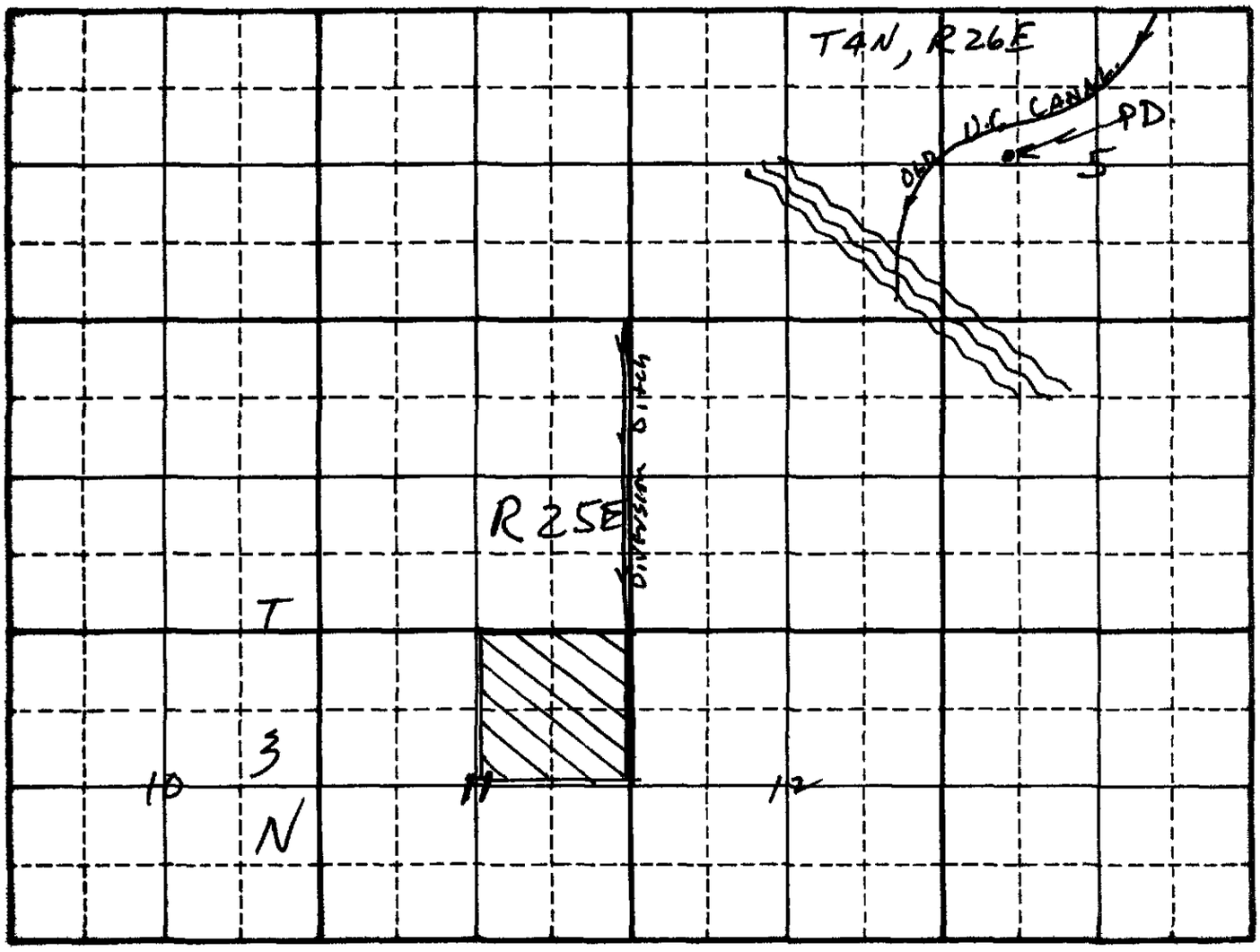
Amount _____ for NO CHANGE purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated: NO CHANGE

TWP	RANGE	SEC	NE ¼				NW ¼				SW ¼				SE ¼				TOTALS
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total number of acres to be irrigated

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

That no one will be injured by such change, and that such change will be made at permit holders own risk.

Signed at Idaho Falls, this 26 day of March, 19 76

Marshall Rankes
(signature)

OK DW

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, Administrator, Operations Division ~~Director~~ of the Department of Water Resources

hereby APPROVE the above application for amendment for Permit No. 34-7080.

Witness my hand this 14 day of May, 19 76

~~Director~~
Administrator, Operations Division

May 18, 1976

Re: Permit No. 34-7080 (Part)

Marshal Todd Perkes
Box 113-3, Rte. 1
Ardo, Idaho 83213

Dear Mr. Perkes:

Enclosed is a copy of your approved application for amendment issued on the above referenced permit.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:JFR

Encl.

Affidavit of Publication

MAY 11 1976

I, Le Eddie Commerack, of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with the issue dated 4/8/76

and ending with the issue dated 4/15/76.

Le Eddie Commerack

Subscribed and sworn to before me this 5 day of April, 19 76

Notary Public

Residence: Arco, Idaho
My commission expires July, 19 77

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

Notice is hereby given that Permit No. 34-7080 in the name of Thomas Perkes was issued for the diversion of 8.00 cfs of water from a ground-water source within the NW¼NE¼, Sec. 5, T. 4N R. 26E, B.M., Butte County; to be used to irrigate 480 acres within the NE¼, Sec. 11, N½, Sec. 12, T 3N, R 25E, B.M.

The permit holder now proposed to amend Permit No. 34-7080 changing the point of diversion to the SW¼NW¼, Sec. 5, T 4N, R 26E, B.M

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before April 26, 1976.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco, Idaho, on April 8 and April 15, 1976.

January 21, 1976

Re: Permit No. 34-7080 (Part)

Marshall Todd Perkes
Route 1, Box 113-B
Arco, ID 83213

Dear Mr. Perkes:

We acknowledge receipt of the assignment conveying the above referenced permit to you. The assignment has been recorded and the Department's records have been changed.

Sincerely,

D. DARLENE REICH
Water Rights Supervisor

DDR:JFR

M E M O

TO: Bob Fleenor

FROM: Ron Carlson

RE: Amendments for Permit No. 34-7080 JOHN E McAFFEE

DATE: September 16, 1976

We are still holding two amendments for permit No. 34-7080, John E. McAffee. As you recall at the conference held April 8, 1976, John McAffee decided to again amend his portion of this permit making the records somewhat confusing. I contacted Mr. McAffee and requested that he withdraw his original amendment, but as of this date we have not heard from him. Is there any reason why the Department could not deny the first amendment and, thereby, void it in our files?

In reviewing the second amendment, it does not consider approval of the first amendment. It appears the applicant did not consider that it would be approved.

Instead I recommend that we simply replace the 1st by the 2nd amendment.

November 20, 1974

Re: Permit No. 34-7080

Mr. Thomas Perkes
Moore,
Idaho 83255

Dear Mr. Perkes:

Enclosed is a copy of your approved Application for Permit No. 34-7080. We direct your attention to the conditions of approval as listed on the fourth page.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Enclosures

CONVERSATION MEMORANDUM

DATE 10-31-74

FILE 34-7080

NAME OF PARTY Eugene Gabert

EMPLOYEE Ron Carlson

RE: I spoke with Mr. Gabert and he indicated that the use of the canal system has been approved by the canal company.

October 21, 1974

Re: Application for Permit No. 34-7080 Perkes

Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application. The legal notice was to have been published in your paper on October 3 and October 10, 1974.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:MB

MAILED

called 10-29-74. CW

XXXXXXXXXXXXXXXXXXXX RESOURCES

September 27, 1974

RE: Application for Permit No. 34-7080 - PERKES

Arco Advertiser
Box "C"
Arco, Idaho 83213

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

Bill submitted 10-30-74 by LB

RDC:CB

Enc: Legal Notice (1)

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Thomas Perkes, Moore, Idaho, has on 9-23-74 submitted Application No. 34-7080 for a permit to appropriate 8.0 cubic feet per second of water from a ground-water source by means of well and pump within the NW¼NE¼, Sec. 5, T. 4N, R 26E, B M, Butte County, which will be diverted through the Moore Canal transported through existing Big Lost River Irrigation District distribution system, to be used from Apr. 1 to Nov. 1 for the irrigation of 480 acres within the NE¼, Sec 11, N½, Sec. 12, T. 3N, R 25E, B M

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before October 21, 1974.

R. KEITH HIGGINSON
Director

Published in the Arco Advertiser, Arco Idaho on October 3 and October 10, 1974

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Thomas Perkes

Moore, Idaho

has on 9-23-74 submitted Application No. 34-7080

for a permit to appropriate 8.0 cubic feet per second

of water from a ground-water source

by means of well and pump

within the NW¼NE¼, Sec. 5, T. 4N, R. 26E, B.M., Butte County: which will be diverted through the Moore Canal transported through existing Big Lost River Irrigation District distribution system;

to be used from Apr. 1 to Nov. 1

for the irrigation of 480 acres

within the NE¼, Sec. 11, N½, Sec. 12, T. 3N, R. 25E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before October 21, 1974.

R. KEITH HIGGINSON

Director

Published in the Arco Advertiser, Arco, Idaho

on October 3 and October 10, 1974

CB. L. D. K.
MB-
CW. K

XXXXXXXXXXXXXXXXXXXXXXX RESOURCES

September 26, 1974

Re: Application for Permit No. 34-7080

Mr. Thomas Perkes
Moore
Idaho 83255

Dear Mr. Perkes:

In checking the above referenced application, we found that Mr. Don Hymas was listed as the owner of the property at the point of diversion. In Item 9c, you mentioned that you will get an easement from Mr. Hymas to drill the well. When this document has been received, please send this office a copy.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

LOY H. JOHNSON
Water Resource Supervisor

LHJ:MB